

FEDERAL BUREAU OF INVESTIGATION
FOI/PA
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FOI/PA# 1202154-0

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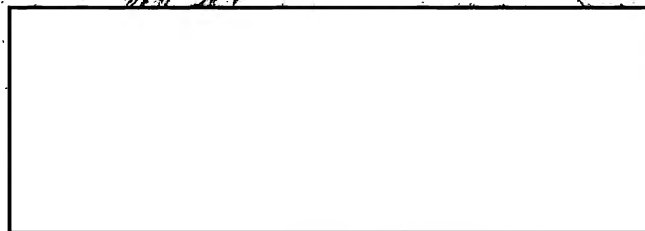
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

MCRP
Russell Charles Means
1-17-76
R2097



10-5-76
R2097

MCRP



b6
b7C

11/17/76
R-214

MCRP
James Leroy Binks
R-58 11/17/76

"TREAT AS ORIGINAL"

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

Transmit attached by Facsimile - PLAINTEXT

MAY 30 1974

Priority *urgent*

Assoc. Dir.	_____
Dep.-A.D.-Adm.	_____
Dep.-A.D.-Inv.	_____
Asst. Dir.:	
Admin.	_____
Comp. Syst.	_____
Ext. Affairs	_____
Files & Com.	_____
Gen. Inv.	_____
Ident.	_____
Inspection	_____
Intell.	_____
Laboratory	_____
Plan. & Eval.	_____
Spec. Inv.	_____
Training	_____
Legal Coun.	_____
Telephone Rm.	_____
Director Sec'y	_____

TELETYPE

To: *Director FBI*
Attn: Mr. C. Gordon, Rm 2266, Date: 5/30/74
Gen. James (Unit, GID)

From: *SA [redacted]*
Subject: *SA [redacted]*

Transmitted *RFB*
Initials: *[initials]*

SA [redacted]
SA [redacted]
Wounded Knee related.

☐ Fingerprint Photo ☐ Fingerprint Record ☐ Map ☐ Newspaper clipping ☐ Photograph

☐ Artists Conception

Special handling instructions:

On portion of transcript
means of [redacted] Case pertaining
to the incident involving attempt
to enter [redacted] make citizens arrest of
SA [redacted] 5/29/74. Two off limits
signed [redacted]

Hand carry to Supervisor, Gordon

Approved: *[signature]*

filed with [redacted] this date.

[redacted]

SA [redacted]

SA [redacted]

MCT-24
REC-40

EX-115

CH 38

18 JUN 4 1974

ENCLOSURE

89-2881-1
SA-X-GORDON

58 JUN 14 1974
258

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DENNIS BANKS,

Defendant.

CR73-5034

CR73-5062

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RUSSELL MEANS,

Defendant.

CR73-5035

CR73-5063

TRANSCRIPT OF TRIAL PROCEEDINGS

BEFORE

HONORABLE FRED J. NICHOL

MAY 29, 1974

VOLUME 76

ENCLOSURE

89-2881-1

1 correct?

2 A Yes. I saw it on the ground.

3 Q It was like a homeless phone lying on the ground?

4 A That's right.

5 Q You took it in, is that correct?

6 A That's right.

7 Q Now, the following night that phone wasn't on the
8 ground any more, was it?

9 A If I remember correctly, that's correct, it was not.

10 Q It was in an FBI truck, was it not?

11 A It was in a rental van.

12 Q A rental van?

13 A Yes.

14 Q Which the FBI was using, is that correct?

15 A Yes, I think so.

16 Q And you listened in then, too?

17 A Didn't hear you. Say again?

18 Q You listened in that night, too?

19 A Yes. It was on the tailgate of the truck.

20 Q Right. Then, the following night, didn't you listen
21 in again?

22 A It's possible that I did. I can't remember if I was
23 there the third night or not. It is possible.

24 MR. KUNSTLER: That is all,

25 Your Honor.

1 THE COURT: Very well. Any
2 redirect?

3 MR. HURD: No.

4 THE COURT: I guess you may step
5 down.

6 MR. HURD: Too many questions,
7 I am not going to pay off.

8 THE COURT: Mr. [REDACTED] you
9 want to step down.

10 (Witness excused.)

11 MR. HURD: Max Fritschel.

12 MR. BANKS: We are placing this
13 man under citizens arrest.

14 THE COURT: You do not. Wait.

15 Mr. Means and Mr. Banks, you —

16 MR. BANKS: Under Title 18,
17 U.S. Code.

18 THE COURT: Mr. Means and Mr. Banks,
19 nobody is arrested in the courtroom except for the —

20 MR. BANKS: We would like to
21 place him under arrest.

22 MR. MEANS: We would ask the
23 marshals to put him in custody.

24 THE COURT: You can make that
25 request to the marshals.

b6
b7C

1 MR. BANKS: Marshals, jail him.

2 THE COURT: Not in the courtroom.

3 MR. LANE: Your Honor --

4 MR. HURD: This is a show for the
5 press. I'm getting so sick of this stuff.

6 THE COURT: I might also add
7 that as far as arrests are concerned, witnesses
8 testifying in a court are exempt from arrest not only
9 in the courtroom but in the whole courthouse by
10 virtue of their being called.

11 MR. BANKS: Should we then go
12 outside at the back door and the front door?

13 THE COURT: I am not giving
14 permission for you to leave. If you have somebody
15 you want to send out to try to make a citizens
16 arrest, you can try.

17 Apparently you have got a lot of agents.

18 MR. LANE: Many concerned citizens
19 Your Honor.

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MR. HURD: I think the record should be clear that the Court isn't encouraging that.

THE COURT: No, I'm not encouraging that or inviting any citizens arrest.

MR. KUNSTLER: It is a right they have under the statute, Your Honor, whether you encourage it or not.

THE COURT: It doesn't prove that a citizens arrest should stick.

MR. HURD: Unless it's committed in their presence, an alleged felony is committed in their presence.

THE COURT: Now, Mr. Kunstler, that would be to that person testifying here in court is exempt from arrest.

MR. KUNSTLER: I'm not testing that, Your Honor. Your Honor said he passed no approval or disapproval.

THE COURT: I certainly am not.

MR. KUNSTLER: That is all.

THE COURT: If a person testifying as a witness is subject to being arrested because of his testimony by anybody that happens to be in the courtroom, we would never get anybody to ever testify.

1 to anything.

2 MR. LANE: The problem is, Your
3 Honor, that the defendants have to remain in the
4 courtroom and Mr. [REDACTED] flies to Los Angeles.

5 MR. HURD: If anybody takes this
6 serious, Your Honor --

7 MR. LANE: We think the
8 government is not acting serious and the citizens
9 have to act. I might say, I had made an arrest of
10 an FBI agent --

11 THE COURT: Not in a courtroom.

12 MR. LANE: In a police station.

13 THE COURT: Police station is not
14 a courtroom.

15 MR. LANE: I had a Rapid City
16 issue a warrant for his arrest --

17 MR. HURD: Your Honor, Judge,
18 that is a completely different --

19 THE COURT: I hate to ask,
20 Mr. Lane, what happened as a result of the citizens
21 arrest.

22 MR. BANKS: There was a lot of
23 clubbing of heads --

24 MR. HURD: We are getting into
25 everything that was said at --

1 THE COURT: I don't know if it
2 makes any difference if we call another witness.
3 We might just as well secure now and I'll say, again,
4 ladies and gentlemen of the jury, please remember
5 as we are about to adjourn not to discuss this case
6 among yourselves or with others or permit anybody to
7 discuss this case in your presence. If anybody should
8 persist in doing so, please let me know who they are.

9 Also, while perfectly proper to reflect upon
10 the case, please do not make any prejudgment of what
11 your verdict may be on any matters concerning this
12 trial and, again, I would remind you not to read,
13 listen to or watch any television or any newspaper
14 reports about this trial or any matters connected
15 with this trial.

16 Court will be in recess, remembering
17 tomorrow morning I will work only in the morning from
18 9:30 to 12:30.

19 The Court will be in recess until 9:30
20 tomorrow morning.

21 (Court was recessed at 4:35 o'clock
22 p.m. May 29, 1974 to reconvene
23 May 30, 1974 at 9:30 o'clock a.m.)
24
25

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

PLAINTIFF,

VS.

CR. 73-5034

CR. 73-5062

DENNIS BANKS,

DEFENDANT.

UNITED STATES OF AMERICA,

PLAINTIFF,

VS.

CR. 73-5035

CR. 73-5063


RUSSELL MEANS,

DEFENDANT.

AFFIDAVIT

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

On Wednesday, May 29, 1974, at about 4:45 P.M. I entered the Pioneer Building following Special Agent Gerold Bertinot to try to make a citizen's arrest on him for committing an illegal wiretap. At the same time I was filming the actions of Tommy Lone Wolf and the agents and police surrounding Agent Bertinot. A man I took to be a federal agent, whom I could recognize again, turned around, came at me, and swung at me, hitting my right arm.


Chris Spotted Eagle

Subscribed and sworn to before me
this 30th day of May, 1974.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

PLAINTIFF,

VS.

CR. 73-5034

CR. 73-5062

DENNIS BANKS,

DEFENDANT.

UNITED STATES OF AMERICA,

PLAINTIFF,

VS.

CR. 73-5035

CR. 73-5063

RUSSELL MEANS,

DEFENDANT.

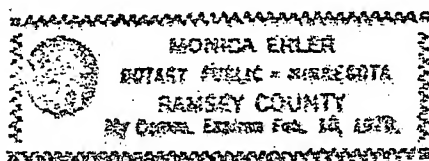
AFFIDAVIT

On Wednesday, May 29, 1974, at about 4:45 P.M. I entered the Pioneer Building following Special Agent Gerald Bertinot to try to make a citizen's arrest on him for committing an illegal wiretap. I reached for Agent Bertinot and the Federal Agents with Bertinot knocked me to the floor to prevent me from arresting him.

Tommy Lane Wolf
Tommy Lane Wolf

Subscribed and sworn to before
me this 30th day of May, 1974.

Monica Erler



PLAINTEXT

TELETYPE

NITEL

6/1/74

TO SAC, MINNEAPOLIS (89-206)

FROM DIRECTOR, FBI

SA

AFO; WOUNDED KNEE RELATED.

REURNITEL 6/1/74.

MINNEAPOLIS CONFIRM U. S. ATTORNEY'S DECLINATION AND
REASON THEREFORE CONCERNING ASSAULTING A FEDERAL OFFICER IN
REGARD TO SA [REDACTED] PROVIDE A COPY OF THIS LETTER TO THE
BUREAU.

1 - Mr. [REDACTED]
1 - Mr. [REDACTED]
1 - Mr. Gordon
1 - Mr. [REDACTED]
1 - Mr. [REDACTED]
1 - Mr. [REDACTED]

JRB:mkc (8)

REC-40

JUN 4 1974

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

JUN 01 1974

TELETYPE

58 JUN 14 1974
MAIL ROOM

TELETYPE UNIT

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Admin. _____
Comp. Syst. _____
Ext. Affairs _____
Files & Com. _____
Gen. Inv. _____
Ident. _____
Inspection _____
Intell. _____
Laboratory _____
Plan. & Eval. _____
Spec. Inv. _____
Training _____
Legal Coun. _____
Telephone Rm. _____
Director Sec'y _____

1 - Mr. [REDACTED]
1 - Mr. [REDACTED]
1 - Mr. [REDACTED]
1 - Mr. Gordon

PLAINTEXT

TELETYPE

1 - Mr. [REDACTED]
1 - Mr. [REDACTED]
1 - Mr. Mintz
1 - Mr. [REDACTED]

IMMEDIATE

TO: SAC, MINNEAPOLIS (157-3371)

5/30/74

FROM: DIRECTOR, FBI

PERSONAL ATTENTION

WOUNDED KNEE LEADERSHIP TRIALS, ST. PAUL, MINNESOTA;
NON-LEADERSHIP AMERICAN INDIAN MOVEMENT TRIALS, SIOUX
FALLS, SOUTH DAKOTA, CRIME ON INDIAN RESERVATION - BURGLARY.

RE MINNEAPOLIS NITELS 2:00 AM AND 2:04 AM, 5/30/74,
ADVISING FBIHQ DEFENDANTS DENNIS JAMES BANKS AND RUSSELL
CHARLES MEANS ATTEMPTED TO EFFECT A CITIZEN'S ARREST ON WITNESS
SA [REDACTED] FBI, NEW ORLEANS DIVISION, UPON COMPLETION
OF HIS TESTIMONY IN U. S. DISTRICT COURT, ST. PAUL, MINNESOTA,
5/29/74, AND THE SUBSEQUENT ACTION OF AMERICAN INDIAN MOVEMENT
(AIM) SYMPATHIZERS TO HARASS SA [REDACTED]

YOU ARE TO CONTINUE TO TAKE ALL NECESSARY ACTIONS TO
AVOID SUCH CONFRONTATIONS WITH AIM PERSONNEL AND THEIR
SYMPATHIZERS, AS WAS DONE IN THE CASE OF SA [REDACTED]

HOWEVER, YOU ARE TO IMMEDIATELY ASSIGN SUFFICIENT SPECIAL
AGENT MANPOWER TO INSURE THE SAFETY AND WELL-BEING OF FBI
PERSONNEL AT THE TRIAL OF DENNIS JAMES BANKS AND RUSSELL
CHARLES MEANS. YOU ARE TO TAKE DEFENSIVE PRECAUTIONS IN EVERY

NOTE: See Page 2

JCG:jyl
(11)

89-2881
NOT RECORDED

46 JUN 5 1974

DUPLICATE YELLOW
WIRE TRANSMITTED

258
57 JUN 14 1974

ORIGINAL FILED IN

TELETYPE TO SAC, MINNEAPOLIS
RE: WOUNDED KNEE LEADERSHIP TRIALS

INSTANCE WHERE THIS BECOMES NECESSARY. THIS MATTER SHOULD
BE COORDINATED WITH THE U. S. MARSHALS SERVICE AND THE U. S.
ATTORNEY'S OFFICE.

ALL INCIDENTS OF HARASSMENT OR ATTEMPTS TO MAKE CITIZEN'S
ARRESTS OF OUR AGENT OR CLERICAL PERSONNEL ARE TO BE
IMMEDIATELY REPORTED TELEPHONICALLY ON A 24-HOUR BASIS TO
FBIHQ, FOLLOWED BY A CONFIRMING TELETYPE.

YOU ARE FURTHER AUTHORIZED TO FURNISH IN U. S. DISTRICT
COURT, ST. PAUL, MINNESOTA, TODAY, 5/30/74, TO THE HONORABLE
FRED J. NICHOL, THE PRESIDING U. S. DISTRICT JUDGE IN THE
MEANS AND BANKS CASE, A COPY OF THIS COMMUNICATION.

NOTE: This pertains to the first AIM leadership case involving
Dennis James Banks and Russell Charles Means for Federal
violations as a result of the takeover of Wounded Knee, South
Dakota, during early 1973. SA [redacted] of the New Orleans^{b6}
Office, was testifying in this case and upon completion of his^{b7c}
testimony subjects Banks and Means attempted to make a citizen's
arrest of him in the courtroom. Subsequently it was necessary
for other Agents to escort SA [redacted] to the St. Paul Resident
Agency and to intercept 20 - 30 militant Indians so that
SA [redacted] could be escorted by the St. Paul Police Department
out of the area of the courthouse. FBIHQ is instructing the
SAC to avoid such instances if at all possible, as he did in
this case; however, to take necessary action to insure the
safety of our Agent and clerical personnel. This matter was
coordinated by Supervisor SA John C. Gordon, General Crimes
Unit, General Investigative Division, with Assistant Director
John A. Mintz, Office of Legal Counsel. The SAC is being
authorized to furnish a copy of this communication to USDJ Nichol
so that the court will be aware of what instructions FBIHQ has
issued to the SAC in the event a similar incident takes place
in the future. This course of action is necessary due to the
past problems the FBI has had with USDJ Nichol.

PLAINTEXT

TELETYPE

1 - Mr. [REDACTED]
1 - Mr. [REDACTED]
1 - Mr. Gordon URGENT
1 - Mr. [REDACTED]
1 - Mr. [REDACTED]

TO: SAC, MINNEAPOLIS (157-3371)

FROM: DIRECTOR, FBI [REDACTED]

WOUNDED KNEE LEADERSHIP TRIALS, ST. PAUL MINNESOTA;

NON-LEADERSHIP AMERICAN INDIAN MOVEMENT TRIALS, SIOUX
FALLS, SOUTH DAKOTA, CRIME ON INDIAN RESERVATION - BURGLARY.

RE MINNEAPOLIS NITELS 2:00 AM AND 2:04 AM, 5-30-74.

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MINNEAPOLIS PROMPTLY FURNISH BY FACSIMILE THOSE PORTIONS
OF THE TRIAL TRANSCRIPT IN THE MEANS AND BANKS CASE PERTAINING
TO THE INCIDENT INVOLVING BANKS AND MEANS ATTEMPT TO MAKE A
CITIZEN'S ARREST ON SA [REDACTED] 5-29-74.

IF NOT ALREADY DONE, MINNEAPOLIS SHOULD PROMPTLY CONTACT
THE APPROPRIATE USA CONCERNING AIM MEMBERS AND THEIR SYMPA-
THIZERS MAKING CITIZEN'S ARREST OF FBI SPECIAL AGENT WITNESSES
AND OTHER POSSIBLE GOVERNMENT WITNESSES IN U. S. DISTRICT
COURT AND OUTSIDE OF THE COURTHOUSE BUILDING. THE USA SHOULD
BE ASKED TO CONSIDER REQUESTING USDJ FRED J. NICHOL TO ENJOIN
THE DEFENDANTS, RUSSELL CHARLES MEANS AND DENNIS JAMES BANKS,
AND ANY OTHER AIM SYMPATHIZERS FROM ANY FURTHER ATTEMPTS TO
ENGAGE IN CITIZEN'S ARREST OR HARASSMENT OF WITNESSES IN

NOTE: See Page 3

U. S. DISTRICT COURT OR OUTSIDE THE COURTHOUSE BUILDING.

JCG:kms

(9)

DUPLICATE YELLOW OF
WIRE TRANSMITTED

89-2881
NOT RECORDED

46 JUN 5 1974

38 JUN 14 1974
258

ORIGINAL FILED IN 157-31312-260

TELETYPE TO SAC, MINNEAPOLIS
RE: WOUNDED KNEE LEADERSHIP TRIALS

THE USA SHOULD ALSO BE REQUESTED TO HAVE THE COURT CONSIDER
CONTEMPT ACTION FOR THOSE PARTIES RESPONSIBLE FOR DISRUPTION
OF THE COURT PROCEEDINGS ON 5-29-74.

ALSO EXPLORE WITH THE USA ALL POSSIBLE VIOLATIONS OF
ASSAULTING
~~XXXXXXXX~~ FEDERAL OFFICERS AND/OR OBSTRUCTION OF JUSTICE
STATUTES BY MEMBERS OF AIM AND AIM SYMPATHIZERS INVOLVED
IN THE INCIDENT OF 5-29-74 CONCERNING SA
FBI, NEW ORLEANS DIVISION.

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b7c

IN LINE WITH THE ABOVE, ADVISE FBIHQ OF ANY OTHER ACTION
TAKEN BY THE MINNEAPOLIS OFFICE IN THIS REGARD ALONG WITH YOUR
RECOMMENDATIONS.

THE PERSONAL SAFETY OF FBI AGENT AND CLERICAL PERSONNEL
AT THE WOUNDED KNEE LEADERSHIP TRIALS IN SAINT PAUL, MINNESOTA,
AND THE NON-LEADERSHIP AIM TRIALS IN SIOUX FALLS, SOUTH DAKOTA,
IS OF EXTREME IMPORTANCE. AND FBIHQ IS TO BE KEPT ADVISED BY
EXPEDITE COMMUNICATIONS OF ANY SITUATIONS INVOLVING AIM MEMBERS
AND AIM SYMPATHIZERS WHICH PRESENT A THREAT TO OUR PERSONNEL
AT THESE TRIALS AND WHAT ACTION THE MINNEAPOLIS OFFICE INITIATED
TO COPE WITH THE SITUATION. SUNITEL.

TELETYPE TO SAC, MINNEAPOLIS
RE: WOUNDED KNEE LEADERSHIP TRIALS

NOTE:

This pertains to the first AIM leadership case involving Dennis James Banks and Russell Charles Means for Federal violations as a result of the takeover of Wounded Knee, South Dakota, during early 1973. SA [redacted] of the New Orleans Office, was testifying in this case and upon completion of his testimony subjects Banks and Means attempted to make a citizen's arrest of him in the courtroom. Subsequently it was necessary for other Agents to escort SA [redacted] to the St. Paul Resident Agency and to intercept 20 - 30 militant Indians so that SA [redacted] could be escorted by the St. Paul Police Department out of the area of the courthouse. Minneapolis has previously been instructed by FBIHQ to avoid such instances if at all possible, however, to take necessary action to insure safety of our Agent and clerical personnel.

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b7C

In this teletype, Minneapolis is being instructed, if not already done, to request the court to enjoin defendants, Means and Banks, or any other AIM sympathizers from making citizen's arrests of FBI Special Agent witnesses and other Government witnesses and to consider contempt action for those parties responsible for the disruption of the court proceedings, 5-29-74. This matter was coordinated by Supervisor SA John C. Gordon, General Crimes Unit, General Investigative Division, with Assistant Director John A. Mintz, Office of Legal Counsel.

May 31, 1974
GENERAL INVESTIGATIVE DIVISION

Attached sets forth additional details concerning possible Assaulting Federal Officer (AFO) matter wherein attempt was made by Dennis James Banks and Russell Charles Means, defendants at Wounded Knee leadership trials, St. Paul, Minnesota, to effect citizen's arrest of Special Agent (SA) [redacted]

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[redacted] New Orleans Division, on 5/29/74, for violation of wiretapping statute.

Minneapolis Office advised one Indian ran after SA [redacted] and attempted to grab and arrest him but was barred by an SA who fell to the ground with the Indian who was later identified as [redacted]. Other Indians near SA [redacted] were prevented from arresting him by SAs and St. Paul police officers. No significant injuries known at this time.

Facts concerning AFO being presented to U. S. Attorney, Minneapolis.

SA [redacted] returned to New Orleans Division 5/30/74.

By subsequent teletype Minneapolis Office advised affidavits submitted by [redacted] and [redacted] (copies attached) to U. S. District Court, District of South Dakota, Western Division, concerning their allegations of being struck while endeavoring to make citizen's arrest of SA [redacted].

Bureau will be kept advised of pertinent developments.

W.A.
5/31

W.A.
5/31

2/6/76

W.A.

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

NR 009 MP CODED

11:00 PM NITEL MAY 30, 1974 MRH MAY 30 1974

TO DIRECTOR

FROM MINNEAPOLIS (89-NEW)

TELETYPE

Asst. Dir.	_____
Adm. Serv.	_____
Ident.	_____
Inspection	_____
Intell.	_____
Laboratory	_____
Legal Coun.	_____
Plan. & Eval.	_____
Spec. Inv.	_____
Training	_____
Telephone Rm.	_____
Director Sec'y	_____

[REDACTED] SA [REDACTED] [REDACTED] APO; [REDACTED]

WOUNDED KNEE RELATED.

RE MINNEAPOLIS NITEL TO BUREAU AND NEW ORLEANS MAY 30, 1974.

AT APPROXIMATELY 4:30 PM MAY 29, 1974, SA [REDACTED]

[REDACTED] CONCLUDED HIS TESTIMONY IN U. S. D. C. ST. PAUL, MINNESOTA, IN

THE DENNIS BANKS, RUSSELL MEANS WOUNDED KNEE LEADERSHIP TRIAL. AS HE WAS PREPARING TO LEAVE THE COURTROOM BANKS AND MEANS APPROACHED HIM AND INFORMED THE COURT THEY WERE GOING TO MAKE A CITIZENS ARREST FOR [REDACTED] ALLEGED VIOLATION OF SECTION 2511 TITLE 18 USC, INASMUCH AS [REDACTED] HAD PREVIOUSLY TESTIFIED THAT HE MONITORED A TELEPHONE AT ROAD BLOCK NUMBER ONE, WOUNDED KNEE, SOUTH DAKOTA, IN MARCH 1973. THIS MONITORING WAS HELD AS AN ILLEGAL INTERCEPT BY JUDGE FRED J. NICHOL IN ^{EARLIER} ~~EARLIER~~ HEARINGS IN THE WOUNDED KNEE CASE. JUDGE NICHOL INFORMED BANKS AND MEANS THAT HE WOULD NOT ALLOW AN ARREST IN THE COURTROOM OR FEDERAL BUILDING AT WHICH TIME SA [REDACTED] PROCEEDED TO THE ST. PAUL RESIDENT AGENCY,

END PAGE ONE

REC-40

EX-115

18 JUN 4 1974

[Handwritten signature: G. J. GORDON]

11A 31 2 11 54 AM
53 JUN 14 1974
258

PAGE TWO

MP 89-NEW

LOCATED ON THE SIXTH FLOOR IN THE FEDERAL BUILDING. THE JUDGE THEN SAID, PERHAPS BANKS AND MEANS HAD "AGENTS" WHO COULD MAKE AN ARREST ON THE STREET, ^{WHEREUPON} ~~WHEREUPON~~ THE INDIAN SPECTATORS LEFT THE COURTROOM IN AN ATTEMPT TO LOCATE [REDACTED] THEY WERE NOT ALLOWED TO ENTER THE ST. PAUL RESIDENT AGENCY. THE INDIANS THEN PROCEEDED TO BLOCK THE FRONT AND REAR DOORS ON THE GROUND FLOOR OF THE FEDERAL BUILDING. SPECIAL AGENTS AND TWO ST. PAUL POLICE OFFICERS ESCORTED [REDACTED] FROM THE RESIDENT AGENCY TO THE SECOND FLOOR SKYWAY AND PROCEEDED TO THE ADJACENT PIONEER BUILDING, THEN CONTINUED BY THE SKYWAY TO THE FIRST NATIONAL BANK OF ST. PAUL BUILDING WHERE INDIANS ATTEMPTED TO INTERCEPT [REDACTED] AND GROUP THEN EXITED THE SKYWAY AND ON STREET LEVEL [REDACTED] ENTERED AN UNMARKED ST. PAUL PD VEHICLE WHICH THEN DROVE TO THE POLICE DEPARTMENT.

ONE INDIAN RAN AFTER [REDACTED] AND ATTEMPTED TO GRAB AND ARREST HIM, BUT WAS BARRED BY A SPECIAL AGENT WHO FELL TO THE GROUND WITH THE INDIAN. THIS INDIAN WAS LATER IDENTIFIED AS [REDACTED]

OTHER INDIANS NEAR [REDACTED] WERE PREVENTED FROM ARRESTING HIM BY SPECIAL AGENTS AND POLICE OFFICERS. NO SIGNIFICANT INJURIES KNOWN AT THIS TIME.

EDN PAGE TWO

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b7c

PAGE THREE

MP 89-NEW

FACTS CONCERNING AFO BEING PRESENTED USA MINNEAPOLIS.

[REDACTED] HAS RETURNED TO OFFICE OF ASSIGNMENT, NEW ORLEANS,
LOUISIANA,
~~LOUISIANA~~, MAY 30, 1974.

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b7c

FBI HEADQUARTERS WILL BE KEPT ADVISED OF ANY PERTINENT INFORMATION.

END

MAH FBIHQ ACK FOR TWO

WA CR CLR

cc: Mr. Mintz
Mr. [REDACTED]
Mr. [REDACTED]

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

MAY 30 1974

TELETYPE

Assoc. Dir. _____
Dep.-A.D.-Adm. _____
Dep.-A.D.-Inv. _____
Asst. Dir.:
Admin. _____
Comp. Syst. _____
Ext. Affairs _____
Files & Com. _____
Gen. Inv. _____
Ident. _____
Inspection _____
Intell. _____
Laboratory _____
Plan. & Eval. _____
Spec. Inv. _____
Training _____
Legal Coun. _____
Telephone Rm. _____
Director Sec'y _____

NR008 MP CODED

10:50PM NITEL MAY 30, 1974 DCW

TO DIRECTOR

NEW ORLEANS

FROM MINNEAPOLIS (89-NEW) (P) FIVE PAGES

CHANGED; [REDACTED]; SA [REDACTED]

AFO, WOUNDED KNEE RELATED.

TITLE MARKED CHANGED TO INCLUDE NAME TOMMY LONE WOLF
AS SUBJECT AND SA [REDACTED] AS [REDACTED] PREVIOUS
FBI HEADQUARTERS COMMUNICATIONS ENTITLED, "WOUNDED KNEE
LEADERSHIP TRIALS, ST. PAUL, MINNESOTA; NON-LEADERSHIP AIM
TRIALS, SIOUX FALLS, SOUTH DAKOTA; CIR - BURGLARY".

RE MINNEAPOLIS NITELS TO FBI HEADQUARTERS MAY 30, 1974;
FBI HEADQUARTERS TELETYPES TO MINNEAPOLIS MAY 30, 1974 AND
BUREAU TELEPHONE CALLS MAY 30, 1974.

REC-40

18 JUN 4 1974

REFERENCED BUREAU TELETYPE AUTHORIZED MINNEAPOLIS
DIVISION TO FURNISH U. S. DISTRICT JUDGE FRED J. NICHOL

END PAGE ONE

See Nitel to SAC MP 5/31/74
Captioned "Dennis James Banks;
Russell Charles Means; CIR - Burglary"
JCS
5/31-608
5/31-608

5/31 JUN 14 1974
258

PAGE TWO

MP 89-NEW

COPY OF TELETYPE SENT 1:05 PM. JUDGE NICHOL RECESSED U. S. DISTRICT COURT, ST. PAUL, MINNESOTA, THIS MORNING AND WILL NOT RETURN TO ST. PAUL UNTIL JUNE 3, 1974. IT IS THE OPINION OF THE MINNEAPOLIS OFFICE THAT JUDGE NICHOL SHOULD NOT BE FURNISHED A COPY OF REFERENCED COMMUNICATION AT THIS TIME, UACB, IN VIEW OF JUDGE NICHOL'S PRIOR PROPENSITY TO DISSEMINATE OR COMMENT TO DEFENSE ATTORNEYS AND PRESS CONCERNING CONFIDENTIAL ITEMS. ALSO, BECAUSE JUDGE NICHOL HAS NOT ASKED THAT HE BE FURNISHED SUCH COMMUNICATION, THAT HE MAY USE THE COMMUNICATION IN THE FUTURE IN A MANNER NOT IN THE BEST INTERESTS OF THE FBI, PARTICULARLY IF IN THE FUTURE THERE IS A CONFRONTATION BETWEEN AGENTS AND SOMEONE CONNECTED WITH AIM. FURTHERMORE JUDGE NICHOL IS ALREADY AWARE OF THE FACT THAT OUR AGENTS WENT TO GREAT LENGTHS TO AVOID A CONFRONTATION ON MAY 29, 1974, AND THE TELETYPE IN QUESTION DOES NOT CONTAIN ANY SIGNIFICANT POLICY OR PROCEDURE THAT WOULD IN ANY WAY EFFECT THE FUTURE CONDUCT OF THIS JUDGE. ALSO, BECAUSE THE JUDGE IS ONLY CONCERNED WITH WHAT HAPPENS IN HIS COURTROOM AND THE CURRENT PROBLEM IS PRINCIPALLY CONCERNED WITH POSSIBLE CONFRONTATIONS OUTSIDE THE COURTROOM, AND THEREFORE HE FEELS IS OUTSIDE HIS JURISDICTION.

END PAGE TWO

PAGE THREE

MP 89-NEW

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ASSISTANT U. S. ATTORNEY (AUSA) [REDACTED]

[REDACTED] MINNEAPOLIS, MINNESOTA, CONTACTED THIS DATE CONCERNING AFO-OBSTRUCTION OF JUSTICE PROCEEDINGS AGAINST AIM MEMBERS AND ALSO CONCERNING POSSIBILITY OF ENJOINING DEFENDANTS FROM FURTHER ILLEGAL ACTIONS AGAINST GOVERNMENT PERSONNEL. [REDACTED] ADVISED THAT U. S. ATTORNEY ROBERT G. RENNER HAD ALREADY CONTACTED THE CIVIL DIVISION, U. S. DEPARTMENT OF JUSTICE AND WAS INFORMED THAT HE COULD NOT GET A PERTINENT RESTRAINING ORDER.

AUSA [REDACTED] STATED HE WOULD MAINTAIN CONTACT WITH MINNEAPOLIS OFFICE AND ADVISE OF HIS DECISION CONCERNING POSSIBLE AFO PROSECUTION IN REGARD TO [REDACTED] IN THE [REDACTED]

INCIDENT. AUSA FURNISHED TO MINNEAPOLIS AFFIDAVIT FROM [REDACTED]

[REDACTED] AND [REDACTED] CONCERNING THEIR ALLEGATIONS OF BEING STRUCK WHILE ENDEAVORING TO MAKE A CITIZEN'S ARREST. ALLEGED INCIDENTS CONCERNING [REDACTED] AND [REDACTED] OCCURRED WHEN THEY WERE TRYING TO "ARREST" SA [REDACTED] IN A SKYWAY OUTSIDE THE ST. PAUL FEDERAL COURT HOUSE BUILDING, ST. PAUL, MINNESOTA.

END PAGE THREE

PAGE FOUR

MP 89-NEW

MINNEAPOLIS DIVISION IS SUBMITTING U. S. DISTRICT COURT TRANSCRIPT BY FACSIMILE CONTAINING COMMENTS IN U. S. DISTRICT COURT, ST. PAUL, MAY 29, 1974, WHICH IMMEDIATELY FOLLOWED CONCLUSION OF [REDACTED] TESTIMONY. SPECIAL NOTICE SHOULD BE TAKEN BY FBI HEADQUARTERS OF PAGES 14588 THROUGH 14593 WHEREIN JUDGE NICHOL INFORMED SUBJECTS RUSSELL MEANS AND DENNIS BANKS THAT THEY SHOULD NOT PERPETRATE CITIZEN'S ARREST BUT STATED THAT PERHAPS FRIENDS OF BANKS AND MEANS MAY WANT TO ATTEMPT SUCH AN ARREST OUTSIDE THE FEDERAL BUILDING. ALSO BEING TRANSMITTED BY FACSIMILE TO HEADQUARTERS ARE COPIES OF AFFIDAVITS OF [REDACTED] AND [REDACTED]

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ADMINISTRATIVE

A COPY OF THIS COMMUNICATION IS BEING FURNISHED THE NEW ORLEANS DIVISION IN VIEW OF INTEREST OF SA [REDACTED]

SAC MINNEAPOLIS HAS BEEN INVOLVED IN EXTENSIVE DISCUSSIONS THIS DATE WITH THE MINNEAPOLIS USA OFFICE. THIS OF COURSE IS NOT THE SAME USA OFFICE HANDLING THE PROSECUTION OF BANKS

END PAGE FOUR

PAGE FIVE

MP 89-NEW

AND MEANS IN ST. PAUL. WE HAVE VERY CLOSE RELATIONSHIP WITH THE
MP OFFICE OF THE USA AND FEEL THEY ARE TAKING EVERY LOGICAL
ACTION TO PROTECT THE INTERESTS OF THE FBI. FURTHER DISCUSSIONS
ARE PLANNED FOR MAY 31, 1974, AND FBIHQ WILL BE ADVISED OF OUR
RECOMMENDATIONS AND ANTICIPATED ACTIONS BY THE OFFICE OF THE USA
MINNEAPOLIS.

END

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE MINNEAPOLIS	OFFICE OF ORIGIN MINNEAPOLIS	DATE 6/3/74	INVESTIGATIVE PERIOD 5/29-30/74
TITLE OF CASE SPECIAL AGENT		REPORT MADE BY [REDACTED]	TYPED BY wkb
[REDACTED]		CHARACTER OF CASE ASSAULTING FEDERAL OFFICERS	

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b7cREFERENCE

mcp Minneapolis nitel to FBIHQ, 5/30/74, and FBIHQ teletype to Minneapolis 5/30/74.

- P -

ADMINISTRATIVE

On 5/31/74, [REDACTED] Assistant United States Attorney, Minneapolis, Minnesota, advised that he would contact Attorney WILLIAM KUNSTLER and state to him that he desired that the FBI interview [REDACTED] and [REDACTED]. He stated that he would advise KUNSTLER that this interview should take place at the Minneapolis Office of the FBI.

ACCOMPLISHMENTS CLAIMED				<input checked="" type="checkbox"/> NONE	ACQUIT-TALS	CASE HAS BEEN: PENDING OVER ONE YEAR <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
CONVIC.	FUG.	FINES	SAVINGS	RECOVERIES		

APPROVED <i>[Signature]</i>	SPECIAL AGENT IN CHARGE	DO NOT WRITE IN SPACES BELOW
COPIES MADE: 3 - Bureau 1 - United States Attorney, Minneapolis, Minnesota 1 - United States Secret Service, Minneapolis, Minnesota 2 - Minneapolis (89-206)		89-2881-5 REC-25 JUN 6 1974

Dissemination Record of Attached Report			
Agency	ICC	USSSI-DOJ	DOJ
Request Recd.			
Date Fwd.	6/17/74	6/17/74	6/17/74
How Fwd.	FD-376	0-14	0-6
By	JCG:dt	JCG:dt	JCG:dt

1 TR 2268

6/17/74 JCG:dt

COVER PAGE

SIX
UNIFORM CR. REP.
DATA PROCESSING
PERS. REC. UNIT

MP 89-206

As it is anticipated that this request for interview will be refused by [redacted] and [redacted] no lead is being set forth for Minneapolis Division.

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LEADS

MINNEAPOLIS

AT MINNEAPOLIS, MINNESOTA

1. Will maintain contact with United States Attorney, Minneapolis, re his prosecutive opinion.
2. Will attempt to obtain description of subject.

B*

COVER PAGE

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATIONUNITED STATES ATTORNEY, MINNEAPOLIS, MINNESOTA
UNITED STATES SECRET SERVICE, MINNEAPOLIS, MINNESOTA

Copy to:

Report of:

Date:

JUNE 3, 1974

Office: MINNEAPOLIS, MINNESOTA

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Field Office File #:

89-206

Bureau File #:

Title:

SPECIAL AGENT

Character:

ASSAULTING FEDERAL OFFICERS

Synopsis:

Following his testimony in U. S. District Court, St. Paul, Minnesota, 5/29/74, SA [redacted] [redacted] was confronted by individuals of the American Indian Movement (AIM) and DENNIS JAMES BANKS, who attempted to effect a citizen's arrest alleging that [redacted] violated Title 18, Section 2511, Wire Tapping Statute. Incident occurred as [redacted] Special Agents of the FBI, and St. Paul Police Officers attempted to leave the Federal Building, St. Paul. FD-302s of Special Agents enclosed. Transcript of Judge FRED J. NICHOL's comments enclosed. AUSA [redacted] [redacted] Minneapolis, Minnesota, contacted and advised his office considering the matter for prosecutive merit. [redacted] supplied copies of affidavits furnished to his office by subject [redacted] [redacted] and [redacted] which are enclosed.

-P-

Details:

This investigation was predicated upon the alleged assault on Special Agent (SA) [redacted] New Orleans Division, in St. Paul, Minnesota, subsequent to his testimony in United States District Court (USDC), St. Paul, Minnesota, relative to the trial of DENNIS JAMES BANKS and RUSSELL CHARLES MEANS on May 29, 1974, by [redacted].

FEDERAL BUREAU OF INVESTIGATION

May 30, 1974

Date of transcription

On May 29, 1974, Special Agent (SA) [redacted] appeared in United States District Court, District of Minnesota, for the purpose of testifying as a Government witness in the Wounded Knee leadership trials.

At approximately 4:30 p.m., upon being dismissed from the witness stand by United States District Court Judge FRED J. NICHOL, SA [redacted] proceeded to leave the courtroom. Upon reaching the attorneys' podium, both DENNIS BANKS and RUSSELL MEANS, defendants in the Wounded Knee leadership trials, approached SA [redacted] declaring that SA [redacted] was being placed under citizen's arrest. At this time, both BANKS and MEANS impeded SA [redacted] exit from the courtroom by holding him by both of his arms.

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Immediately thereupon a discussion ensued between Judge NICHOL, Assistant United States Attorney R. D. HURD, and the two defendants, BANKS and MEANS; whereupon SA [redacted] brushed past BANKS and MEANS and exited the courtroom. Outside the courtroom SA [redacted] furnished SA [redacted] with a key to the stairwell of the 7th floor, at which time SA [redacted] proceeded to the St. Paul Resident Agency Office located on the 6th floor of the Federal Building.

Upon entering the stairwell leading to the 6th floor, SA [redacted] heard the door to said stairwell open and observed two male individuals dressed in Indian clothing proceeding toward him. Upon arriving at the St. Paul Resident Agency Office, SA [redacted] entered same, closing the door after him.

A few moments later a knock was heard upon the Resident Agency door at which time Special Agents (SAs) [redacted] and [redacted] opened said door to be confronted by a number of individuals who indicated that they were there to place SA [redacted] under citizen's arrest. A brief confrontation was had at that point, during which these individuals were advised that they would not be allowed to enter the Resident Agency Office space.

5/29/74

St. Paul, Minnesota

MP

89-206

Interviewed on _____ at _____

File #

By SA [redacted] :wkb

Date dictated

5/30/74

MP 89-206
(2)

SA [redacted], who was standing behind the above-named three FBI Agents, observed an individual who claimed to be a reporter demand his rights to cover the story. This individual attempted to forcefully enter the Resident Agency Space; however, he was prevented from doing so. This individual is described as a Caucasian male, approximately 6 feet 2 inches, thin build, brown stringy hair (shoulder length), wearing an Indian Headband. He wore a light brown buckskin vest-type jacket with a row of what appeared to be horse hair streamers across the back. He also wore calf-length buckskin Indian moccasins.

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Approximately 20 or 30 minutes later, SA [redacted] in the company of SAs [redacted] [redacted] JR., and [redacted] exited the St. Paul Resident Agency en route to the Kellogg Square Apartments which are located directly across the street. Due to the fact there were reports from Federal Security Guards that members of the American Indian Movement were reportedly outside the Federal Building and were attempting to cause an incident with SA [redacted] a route through the skyways was chosen to get to the Kellogg Square Apartments.

Upon entering the skyway between the Federal Building and the Pioneer Building it was observed that three individuals were standing near the doorway, apparently waiting for SA [redacted] exit. It was observed that one of these individuals was a female and all three appeared to be Indians.

At this time, SA [redacted] observed from the skyway that a number of approximately 15-20 individuals were standing at the corner of 4th and Robert Streets, near the Federal Building, and they apparently observed the above-named Special Agents exiting the Federal Building.

SA [redacted] proceeded through the Pioneer Building to the skyway which led to the First National Bank Building. In this skyway, SA [redacted] observed what appeared to be the same individuals he had observed previously proceeding toward the First National Bank Building on Robert Street. SA [redacted] observed Defense Attorney WILLIAM KUNSTLER pointing toward the skyway as though directing the activities of the individuals on Robert Street.

MP 89-206

(3)

SA [] Upon entering the First National Bank Building, leading the way, it was observed that a number of individuals had entered the First National Bank Building and were proceeding toward SA [] and the other Agents. At this point, a reverse direction was taken. SA [] and accompanying Agents proceeded down an escalator in the First National Bank Building in an attempt to proceed back to the Federal Building.

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It was thereafter determined that a number of individuals were on another escalator which led to the skyway toward which SA [] and accompanying Agents were proceeding.

Exit was made of the First National Bank Building on the ground floor on Robert Street, at which time SA [] in the company of SAs [] and [] proceeded across Robert Street to the revolving door entry of the Pioneer building. Upon reaching the revolving door of the Pioneer Building it was observed that DENNIS BANKS, in the company of an unknown number of individuals, was running toward him.

SAs [] and [] entered the revolving doors at which time a confrontation took place with BANKS and other individuals attempting to enter the hallway of the Pioneer Building. SA [] observed SA [] blocking the revolving door and the sound of a physical struggle and shouts were heard.

As SAs [] and [] proceeded through the hallway of the Pioneer Building with the physical confrontation still going on at the revolving doors, an individual broke through and began running toward SA []. A shout was heard, [] you are under arrest. [] at which time the individual grabbed SA []'s arm in an attempt to restrain him. At this time SA [] forcefully pulled away from the grasp of this individual and SA [] was observed blocking the progress of this individual with his body. SA [] thereafter observed this individual losing his balance, falling backwards to the ground.

MP 89-206
(4)

It is to be noted that this individual is the same individual previously described who attempted to forcefully enter the St. Paul Resident Agency Office space earlier.

It is also to be noted that SA [] previously observed this individual inside the United States District Court.

During the afternoon recess, this individual approached SA [] and advised him that he was a reporter for an Indian newspaper and he desired to obtain the correct spelling of SA [] name.

Upon proceeding through the Pioneer Building, SA [] accompanied by SAs [] and [] exited said building from the 4th Street ground floor exit, whereupon they then encountered several Police Officers from the St. Paul Police Department. A police car was parked near this exit, however, same was locked.

One of the Police Officers indicated that he had his personal vehicle parked on the same block, whereupon SAs [] and [] entered said vehicle and proceeded immediately to the St. Paul Police Department.

During the above-described incidents during which the individuals were observed running toward SA [] he became concerned for his personal safety and the safety of the other Agents accompanying him in that because of the individuals' behavior it was obvious that their intention was to forcefully and physically detain SA []

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription May 31, 1974

The following is a description of Special Agent

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Name	[REDACTED]
Date of Birth	[REDACTED]
Place of Birth	Lafayette, Louisiana
Weight	185 pounds
Height	5 feet 11 inches
Hair	Blond
Eyes	Brown
Social Security Number	[REDACTED]
Marital Status	Married, wife [REDACTED]
Children	[REDACTED]
Occupation	Special Agent, Federal Bureau of Investigation, (GS-12) (Entered on duty - [REDACTED])

Interviewed on 5/31/74 at Minneapolis, Minnesota File # MP 89-206by SA [REDACTED] :wkb Date dictated 5/31/74

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/30/74L

Upon completion of testimony in U. S. District Court, St. Paul, Minnesota, at approximately 4:30 PM, SA [redacted] left the witness stand in the Federal court room after being excused as a witness. As he was leaving the court room and approaching the audience area, DENNIS J. BANKS and RUSSELL C. MEANS stood up from the defense table, walked over to SA [redacted] and one of them stated, your honor, we are going to make a citizen's arrest. Judge FRED J. NICHOL informed BANKS and MEANS that this would not be done in the court room or in the Federal Building. SA [redacted] proceeded out of the court room.

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Judge NICHOL then recessed court until 9:30 AM May 30, 1974. I proceeded to the FBI Resident Agency on the sixth floor of the St. Paul Federal Building and there, at approximately 5:15PM, I met with SA [redacted] and St. Paul Police Sergeant [redacted] who informed me that in their opinion, it would be impossible for SA [redacted] to leave the Federal Building by using either the front or back door, inasmuch as individuals were assembled in those areas. SA's [redacted]

[redacted] and I escorted SA [redacted] from the sixth floor of the Federal Building to the second floor of the Federal Building to the area where the enclosed skyway is located. The skyway was entered and the group proceeded, accompanied by St. Paul Police Sergeant [redacted] and Officer [redacted] from the Federal Building to the second floor of the Pioneer Building. The group then went to the second floor of the First National Bank of St. Paul building at which time I moved to a position approximately 15 yards in front of the group.

On the second floor of the First National Bank building, I proceeded to an escalator where I observed numerous individuals coming up both sides of the escalator. I turned and motioned to the Agents who were following me and were at this time located in the skyway between the First National Bank building and the Pioneer Building and they turned and started to proceed back in the direction of the Pioneer building.

Interviewed on 5/29/74 at St. Paul, Minnesota File # MP 89-206

by SA [redacted] dlk Date dictated 5/30/74

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/30/74

1

I, [] Special Agent, Federal Bureau of Investigation, assigned to the St. Paul, Minnesota, Resident Agency, make the following statement concerning the incident which occurred in St. Paul, Minnesota, on May 29, 1974:

At approximately 5:00 p.m., SA [] along with SA [] and [] were escorting SA [] from the Federal Courts Building, Fourth and Robert Street, St. Paul, Minnesota, to the Kellogg Square Apartments, which is directly across the street from the Federal Building, Fourth and Robert Street.

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Due to the fact that there were reports from the Federal Security Guards that members of the American Indian Movement (AIM) were outside the Federal Building and were allegedly there to cause an incident with SA [], a route through the skyways was chosen to proceed to the Kellogg Square Apartment Building.

SA [] along with the above-mentioned Agents, exited the Federal Building through the skyway on the second floor, proceeded through the Pioneer Building, and through the skyway to the First National Bank Building, which is diagonally across from the Federal Building.

In the First National Bank Building, information was received that numerous members of the AIM were blocking the escalator which led from the First National Bank Building to the skyway which connected the First National Bank Building and the Kellogg Square Apartment Building. At this time, SA [] along with SA [] and [] exited the First National Bank Building onto Robert Street and proceeded across

Interviewed on 5/29/74 at St. Paul, Minnesota File # MP 89-206

by SA [] bz Date dictated 5/30/74

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Robert Street to the Pioneer Building. As the above-mentioned Agents were proceeding across Robert Street, SA [] observed an individual he knows to be DENNIS BANKS in front of the group of approximately fifteen to twenty individuals. As the above-mentioned Agents were entering the Pioneer Building, SA [] heard DENNIS BANKS make a statement to the effect, "You're under arrest []"

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The above-mentioned Agents proceeded through the revolving doors at the entrance to the Pioneer Building. As SA [] was walking beside [] down the corridor in the Pioneer Building, SA [] turned to look back toward the entrance to the Pioneer Building and observed an individual coming toward SA [] and SA [] in a rapid manner. This individual was a male, Caucasian appearance, six feet two inches, slender build, brown hair, stringy shoulder length in back, and he was wearing a headband and a tan buckskin-type vest with long leather straps in the back.

This individual, as he was approaching SA [] and SA [] made a statement in a loud voice which SA [] was unable to understand. This individual reached past SA [] and grabbed SA [] by the arm. At this time SA [] began to struggle with this individual to separate him from SA []. This individual fell to the floor, at which time SA [] held him on the floor for a short period of time and then SA [] proceeded down the hall with SA [].

SA [] and [] exited the Pioneer Building onto Fourth Street and entered a vehicle provided by the St. Paul Police Department and SA [] and SA [] proceeded to the St. Paul Police Department in this vehicle.

MP 89-206

(3)

During the above-described incident when the individuals were running toward SA [] SA [] and the other Agents, SA [] became concerned for his safety because it was obvious the individuals intended to forcefully and physically detain SA []

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription May 30, 1974

1

At approximately 4:30 p.m. SA [] was present at the trial of DENNIS JAMES BANKS and RUSSELL CHARLES MEANS in U. S. District Court, St. Paul, Minnesota. SA [] had just completed his testimony in the trial of BANKS and MEANS and was exiting the court room when he was approached by BANKS and MEANS and informed by them that he was being placed under citizens arrest for violation of Title 18, U. S. Code, Section 2511. Judge FRED J. NICHOL advised BANKS and MEANS that no one was going to be arrested in his court room or in the Federal Building. NICHOL advised them that they were not to leave the court room to effect this alleged citizens arrest. Judge NICHOL stated that BANKS and MEANS had friends who could handle this arrest outside of the Federal Courts Building if they so desired.

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[] then exited the court room and as he did he was followed out by approximately six unknown males who had been seated in the spectator section of the court room. SA [] observed this and, along with several U. S. Marshals, followed these individuals down the stairwell from the seventh floor to the St. Paul Resident Agency located on the sixth floor of the Federal Building.

These individuals were confronted at the door of the Resident Agency by SA [] and several other Agents and U. S. Marshals. These individuals were instructed to return to the court room area on the seventh floor. After several moments of discussion these individuals were led back to the seventh floor by the U. S. Marshals present. One of these individuals who had been observed by SA [] in the court room earlier in the day was identified from the list of press personnel as []. SA [] also recognized two other individuals known to him as [] (phonetic) and [].

At approximately 4:45 p.m. SA [] was advised by SA [] that court had been adjourned for the day. SA [] proceeded to the first floor lobby area of the Federal Building and observed that a group of approximately 35 individuals was milling about the front of the building. SA [] telephonically notified SA [] of this development. Sergeant

Interviewed on 5/29/74 at St. Paul, Minnesota File # MP 89-206

by SA [] :jrp Date dictated 5/30/74

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[redacted] St. Paul Police Department, and Patrolman [redacted] approached SA [redacted] and a conversation took place concerning the best way for SA [redacted] to exit the Federal Building. The rear of the building was observed by SA [redacted] and the St. Paul Policemen. Approximately 10-12 unknown male individuals were seen at the rear of the building in the parking area.

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SA [redacted] telephoned SA [redacted] and it was decided the best route of exit for SA [redacted] would be from the second floor of the building, across the skywalk to the Pioneer Building, and subsequently to his hotel.

At approximately 5:15 p.m. SAs [redacted]

[redacted] and the two St. Paul Police Officers accompanied SA [redacted] from the Resident Agency on the sixth floor of the Federal Building to the second floor skywalk. Everyone walked to the second floor of the Pioneer Building and were walking from the Pioneer Building through the skywalk which is connected to the First National Bank Building. As the Agents were walking through this skywalk, SA [redacted] observed BANKS and MEANS leading a group of individuals into the first floor of the First National Bank Building. As the group of Agents and police officers entered the second floor concourse area of the bank building, SA [redacted] motioned from the far end of the corridor that a group of individuals was coming up the stairway. The group of Agents and police officers then exited the bank building onto Robert Street and entered the Pioneer Building directly across the street.

SA [redacted] observed BANKS, [redacted] and several unknown males pursuing the group of Agents and police officers. SAs [redacted] and [redacted] attempted to block the revolving doors in the Pioneer Building entrance. However, several individuals came through the side doors and continued to pursue the group of Agents and police officers. SA [redacted] observed [redacted] and SA [redacted] struggling on the floor. SA [redacted] then observed SA [redacted] and a group of Agents and police officers exit the Pioneer Building onto Fourth Street where SA [redacted] entered a private vehicle and was taken from the area.

SA [redacted] and Sergeant [redacted] then had a conversation with BANKS where an attempt was made to him, BANKS, to disperse the group of individuals around the Federal Building.

FEDERAL BUREAU OF INVESTIGATION

1

Date of transcription May 30, 1974

Approximately 4:35 p.m., Special Agent [redacted] entered the Resident Agency of the FBI located on the 6th floor of the Federal Building, St. Paul, Minnesota. Special Agent [redacted] advised me that he had completed his testimony and that I was wanted on the 7th floor. As I opened the door to enter the corridor, I was met by a group of approximately 20 individuals who told me they wanted to make a citizen's arrest of Special Agent [redacted] for violation of Section 2511, Title 18, United States Code. The group attempted to enter the FBI Office space but entrance was refused.

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At approximately 5:15 p.m. Special Agents [redacted] and I escorted Special Agent [redacted] from the 6th floor of the Federal Building to the second floor of the building as information was received that a group had surrounded the Federal Building and were going to make another attempt to effect a citizen's arrest of Special Agent [redacted].

The above agents were joined on the 6th floor by St. Paul Police Sgt. [redacted] and St. Paul Police Officer [redacted] who suggested and were to lead the group as they stated there was no way agents could leave the Federal Office Building without a confrontation. The agents and officers then proceeded across the skyway from the Federal Building to the 2nd floor of the Pioneer Building and then by skyway to the 2nd floor of the First National Bank of St. Paul Building. During the passage on the skyway, I observed numerous individuals on the street watching, gesturing at and running after the group on the skyways.

On the 2nd floor of the First National Bank Building, Special Agent [redacted] indicated a group of individuals were coming up to the 2nd floor of the bank building from 4th Street entrance. The group without Special Agent [redacted] then proceeded down an escalator to the Robert Street entrance of the bank building,

Interviewed on May 29, 1974 at St. Paul, Minnesota File # MP 89-206

by SA [redacted] mjf Date dictated May 30, 1974

across Robert Street to the 1st floor entrance of the Pioneer Building. At this point, a large group of individuals attempted to follow the officers and agents into the building. The entrance of these individuals into the building was delayed by the slow passage of agents through the revolving doors. Several of the individuals gained entrance through a single door and attempted to run by Special Agents to effect their arrest of [redacted]. Their passage was blocked by Special Agents [redacted] and [redacted]. This individual attempted to grab Special Agent [redacted] and was thwarted by Special Agents [redacted] and [redacted] who came between Special Agent [redacted] and the unknown individual. In the scuffle, the individual grabbed Special Agent [redacted] and attempted to push him out of the way. Special Agents [redacted] and [redacted] then forcibly kept the individual from Special Agent [redacted] all three falling to the floor. Special Agents [redacted] and I then proceeded to the 4th Street entrance of the Pioneer Building where I observed Special Agent [redacted] being driven away in a car.

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I then observed DENNIS BANKS standing on the sidewalk. He called to remaining agents, demanding that they identify themselves by name and stated, "You are aiding and abetting a fugitive to escape."

FEDERAL BUREAU OF INVESTIGATION

(1)

Date of transcription May 30, 1974

At about 4:40 p.m., May 29, 1974, Special Agent [redacted] New Orleans Division, FBI, returned to the St. Paul Resident Agency following testimony at the Wounded Knee leadership trials in St. Paul, Minnesota.

Special Agent (SA) [redacted] advised that several Indians attempted to place him under citizen's arrest as he departed the courtroom. During this time, word was received that the front and rear exits of the Federal Building, St. Paul, Minnesota, were blocked by Indians.

A decision was reached that SA [redacted] would be escorted through the second floor skyway connecting the Federal Building with the Pioneer Building. The escort consisted of Special Agents (SAs) [redacted]

[redacted] and two St. Paul City Policemen, Sgt [redacted] and Patrolman [redacted]

Once inside the Pioneer Building an attempt was made to safely escort SA [redacted] out the front entrance. SA [redacted] Minneapolis, Minnesota, FBI Division, who was leading the escort group by about fifty to sixty feet, and was at the top of the Pioneer Building escalators, motioned for the escort members to go back. In a matter of seconds, SA [redacted] was overcome by a mass of Indians running past him and down the hall. One Indian was shouting "arrest him," and was pointing in the direction of SA [redacted]. We then exited the First National Bank Building at the Robert Street exit and returned to the Pioneer Building. The large group of Indians pursued the Agents and Officers.

In order to avoid a confrontation, we reversed our direction. The Indians became more unruly when their running advancement was slowed by two revolving doors. One male individual managed to get through a side emergency door, next to the revolving door, and ran past the Agents. This person grabbed SA [redacted]. At this time I grabbed the individual and swung him away from SA [redacted] thus breaking the hold he had on SA [redacted]. The individual struck me on the left shoulder

Interviewed on 5/29/74 at St. Paul, Minnesota File # MP 89-206

by SA [redacted] kb Date dictated 5/30/74

MP 89-206

(2)

with his right hand and attempted to pull me with his left hand.

I reacted by throwing him to the floor. I was assisted in doing so by SA [] who had responded to assist SA [] when this individual had attached SA []. During this altercation, the three of us fell to the floor. With SA [] now safely out of the immediate area, I attempted to catch up with SA [] and the Police Officers.

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b7C

SA [] and several City Police Officers were now outside the building attempting to obtain Police transportation for SA [] as it was now obvious that SA [] was in danger of physical harm from the pursuing group of Indians.

DENNIS BANKS, who had been leading and inciting the group of his followers by shouts of, "Arrest []" was now demanding that we remaining Agents identify ourselves to him. He said that we could be arrested for aiding and abetting a fugitive and helping in his escape.

The remainder of the Agents returned to the Federal Building without further harrassment.

FEDERAL BUREAU OF INVESTIGATION

Date of transcription May 30, 1974

On May 29, 1974, at approximately 4:35 p.m., Special Agent (SA) [redacted] of the New Orleans Division of the Federal Bureau of Investigation, entered the St. Paul, Minnesota, Resident Agency located on the 6th floor of the Federal Building. SA [redacted] stated he had finished testifying and as he left the courtroom, a group of Indians attempted to perform an illegal arrest on him, stating that they were making a citizen's arrest.

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At approximately 5:15 p.m., St. Paul Police Officers Sgt. [redacted] and Patrolman [redacted] appeared at the St. Paul Resident Agency and advised that groups of Indians were stationed at the front and rear of the Federal Building. Also, they suggested that SA [redacted] leave the Federal Building via the walkway.

At that point, SAs [redacted] and [redacted] escorted SA [redacted] from the Resident Agency on the 6th floor of the Federal Building to the 2nd floor of the building via the elevator. From the 2nd floor of the Federal Building the above Agents and Officers walked across the 2nd floor skyway, joining the 2nd floor of the Pioneer Building, and then walked through another skyway leading from the 2nd floor of the Pioneer Building to the 2nd floor of the First National Bank Building.

Upon arriving at the First National Bank Building, SA [redacted] stated a group of Indians were coming toward us on the 2nd floor of the Bank Building from the 4th Street entrance. At that point, the group of Special Agents and Policemen went down escalators (without SA [redacted] to the first floor where they exited the First National Bank via the Robert Street entrance and crossed the Robert Street into the first floor entrance of the Pioneer Building.

As we entered the Pioneer Building, a large group of Indians, led by DENNIS BANKS, attempted to follow us in. However, their entry was delayed by Agents holding the revolving doors. When I saw the doors were temporarily secure, I proceeded down the corridor with the two policemen and SA [redacted]

Interviewed on 5/29/74 at St. Paul, Minnesota File # MP 89-206

by SA [redacted] wkb Date dictated 5/30/74

MP 89-206
(2)

As I started down the hall, I heard loud voices yelling, [redacted], you're under citizen's arrest." I turned around toward the revolving doors and observed several Indians bolt through the door. One individual grabbed for SA [redacted] arm, and as he did, SA [redacted] grabbed him and pulled him away from SA [redacted]. I turned and started down the hall with SA [redacted] and another individual grabbed for SA [redacted] at which point I shoved him out of the way.

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b7C

Then the two Police Officers, SA [redacted] and I proceeded down the hall to the 4th Street entrance of the Pioneer Building where SA [redacted] and the two Policemen got into the personal car of one of the Police Officers and drove away. As they drove away, DENNIS BANKS and a group of Indians came down the sidewalk on 4th Street, and BANKS yelled, "You are aiding and abetting a Federal fugitive to escape. What are your names?" The remaining Agents then returned to the St. Paul Resident Agency on the 6th floor of the Federal Building.

MP 89-206

The following transcript, Pages 14588-14593, were obtained from the transcript of trial proceedings before Honorable Judge FRED J. NICHOL in the United States District Court, District of South Dakota, Western Division, St. Paul, Minnesota, on May 29, 1974, in the trial of United States of America vs DENNIS J. BANKS and RUSSELL CHARLES MEANS.

correct?

A Yes. I saw it on the ground.

Q It was like a homeless phone lying on the ground?

A That's right.

Q You took it in, is that correct?

A That's right.

Q Now, the following night that phone wasn't on the ground any more, was it?

A If I remember correctly, that's correct, it was not.

Q It was in an FBI truck, was it not?

A It was in a rental van.

Q A rental van?

A Yes.

Q Which the FBI was using, is that correct?

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A Yes, I think so.

Q And you listened in then, too?

A Didn't hear you. Say again?

Q You listened in that night, too?

A Yes. It was on the tailgate of the truck.

Q Right. Then, the following night, didn't you listen in again?

A It's possible that I did. I can't remember if I was there the third night or not. It is possible.

MR. KUNSTLER: That is all,
Your Honor.

1 THE COURT: Very well. Any
2 redirect?

3 MR. HURD: No.

4 THE COURT: I guess you may step
5 down.

6 MR. HURD: Too many questions,
7 I am not going to pay off.

8 THE COURT: Mr. [REDACTED] you
9 want to step down.

10 (Witness excused.)

11 MR. HURD: [REDACTED]

12 MR. BANKS: We are placing this
13 man under citizens arrest.

14 THE COURT: You do not. Wait.

15 Mr. Means and Mr. Banks, you --

16 MR. BANKS: Under Title 18,
17 U.S. Code.

18 THE COURT: Mr. Means and Mr. Bank
19 nobody is arrested in the courtroom except for the --

20 MR. BANKS: We would like to
21 place him under arrest.

22 MR. MEANS: We would ask the
23 marshals to put him in custody.

24 THE COURT: You can make that
25 request to the marshals.

On May 30, 1974, Special Agent in Charge JOSEPH H. TRIMBACH and Special Agent [redacted] met with [redacted] Assistant United States Attorney, Minneapolis, Minnesota, in his office. The facts in this matter were discussed with Mr. [redacted] and he advised that his office would consider this matter for its prosecutive merit.

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Mr. [redacted] advised that earlier in the day he had a conversation with [redacted] DENNIS BANKS and Attorney WILLIAM KUNSTLER and at that time they presented him with copies of affidavits signed by [redacted] and [redacted] alleging that they had been assaulted by Special Agents of the FBI while attempting to make a citizen's arrest on Special Agent [redacted], following his testimony at the trial of DENNIS BANKS and RUSSELL MEANS in St. Paul, Minnesota. Mr. [redacted] advised that he was informed at that time that American Indian Movement members would continue their efforts to effect citizen's arrests of those Special Agents of the FBI whom they felt were guilty of either perjury in their testimony at the BANKS and MEANS trial or guilty of harrassment of American Indian Movement members and supporters.

Mr. [redacted] furnished copies of the [redacted] and [redacted] affidavits.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

PLAINTIFF,

VS.

CR. 73-5034

CR. 73-5062

DENNIS BANKS,

DEFENDANT.

UNITED STATES OF AMERICA,

PLAINTIFF,

VS.

CR. 73-5035

CR. 73-5063

RUSSELL MEANS,

DEFENDANT.

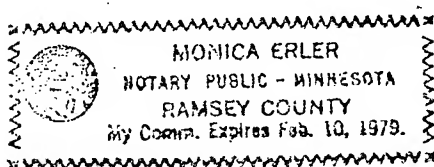
AFFIDAVIT

On Wednesday, May 29, 1974, at about 4:45 P.M. I entered the Pioneer Building following Special Agent Gerald Bertinot to try to make a citizen's arrest on him for committing an illegal wiretap. I reached for Agent Bertinot and the Federal Agents with Bertinot knocked me to the floor to prevent me from arresting him.

Tommy Lane Wolf
Tommy Lane Wolf

Subscribed and sworn to before
me this 30th day of May, 1974.

Monica Erler



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

PLAINTIFF,

VS.

CR. 73-5034

CR. 73-5062

DENNIS BANKS,

DEFENDANT.

UNITED STATES OF AMERICA,

PLAINTIFF,

VS.

CR. 73-5035

CR. 73-5063


RUSSELL MEANS,

DEFENDANT.

AFFIDAVIT

STATE OF MINNESOTA))
COUNTY OF RAMSEY) ss.

On Wednesday, May 29, 1974, at about 4:45 P.M. I entered the Pioneer Building following Special Agent Gerold Bertinot to try to make a citizen's arrest on him for committing an illegal wiretap. At the same time I was filming the actions of Tommy Lone Wolf and the agents and police surrounding Agent Bertinot. A man I took to be a federal agent, whom I could recognize again, turned around, came at me, and swung at me, hitting my right arm.


Chris Spotted Eagle

Subscribed and sworn to before me
this 30th day of May, 1974.

PLAINTEXT

TELETYPE

1 - Mr. Gordon NITEL
1 - Mr. Mintz
1 - Mr. [REDACTED]

b6
b7C

TO: SAC, MINNEAPOLIS

5-31-74

FROM: DIRECTOR, FBI

DENNIS JAMES BANKS; RUSSELL CHARLES MEANS; CIR - BURGLARY,
ETC.

RE MINNEAPOLIS NITEL 10:50 PM, 5-30-74, CAPTIONED, [REDACTED]

SA [REDACTED]

AFO, WOUNDED

KNEE RELATED." AND BUTEL 5-30-74 "WK LEADERSHIP TRIALS, " ETC.

SO THAT FBIHQ CAN MAKE A PROPER EVALUATION OF THE
SITUATION INVOLVING THE HARASSMENT OF OUR SPECIAL AGENT
PERSONNEL BY MEMBERS OF AIM DURING THE WOUNDED KNEE LEADERSHIP
TRIALS AT ST. PAUL, MINNESOTA, MINNEAPOLIS IS TO SUBMIT IN
FULL DETAILS BY NOON MONDAY 6-3 NEXT THE ANSWER TO THE
FOLLOWING QUESTION: WHAT ARE THE GOVERNMENT PROSECUTORS IN
THE BANKS AND MEANS CASE DOING TO OBTAIN PROTECTION BY COURT
ORDER OR OTHERWISE FOR FBI WITNESSES, OTHER WITNESSES, AND THE
JURY FROM FURTHER HARASSMENT BY CITIZEN'S ARRESTS AND INTIMI-
DATION BY THE DEFENDANTS AND THEIR SYMPATHIZERS? SUTEL.

JCG:kms
(5)

MCT-33

189-2881-6

JUN 1 1974

NOTE: See Page 2.

REC 107

CH 38

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

MAY 31 1974

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56 JUN 21 1974

MAIL ROOM TELETYPE UNIT

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Teletype to SAC, Minneapolis
Re: DENNIS JAMES BANKS

NOTE:

This pertains to the first Wounded Knee Leadership Trial being held in USDC, St. Paul, Minnesota, as a result of the American Indian Movement take-over of Wounded Knee, South Dakota, during the first part of 1973. On 5-29-73 in USDC, AIM leaders, Dennis James Banks and Russell Charles Means, attempted to make a citizen's arrest on SA [REDACTED] in the courtroom at the end of his testimony. Approximately 20 or 30 AIM Indian sympathizers pursued SA [REDACTED] when he left the courtroom, and it was necessary for other Special Agents to intercede to have SA [REDACTED] escorted by the police from the area of the courthouse. The Bureau has previously instructed Minneapolis to contact the appropriate USA and ask him to consider requesting the presiding USDJ Fred J. Nichols to enjoin the defendants, Means and Banks, and any other AIM sympathizers from any further attempts to engage in citizen's arrests or harassment of witnesses in USDC or outside the courthouse building. It appears from communications received, that Minneapolis has taken this up with the USA at Minneapolis rather than with USA William F. Clayton and his staff, who are prosecuting Means and Banks on a change of venue in St. Paul, Minnesota. This matter has been coordinated by Supervisor SA John C. Gordon, General Crimes Unit, General Investigative Division, with Assistant Director John A. Mintz, Office of Legal Counsel.

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June 1, 1974

GENERAL INVESTIGATIVE DIVISION

This concerns the possible Assaulting Federal Officer (AFO) matter wherein an attempt was made by Dennis James Banks and Russell Charles Means, b6 defendants at Wounded Knee leadership trials, b7C St. Paul, Minnesota, to effect citizen's arrest of Special Agent [redacted] New Orleans Division, on 5/29/74, for violation of wiretapping statute at conclusion of his testimony in U. S. District Court (USDC), St. Paul, Minnesota.

Attached advises that Assistant U. S. Attorney (AUSA), Sioux Falls, South Dakota, has advised his office is considering presenting an affidavit to U. S. District Judge (USDJ) Fred J. Nichol, USDC, St. Paul, Minnesota, a.m., 6/3/74, requesting that Means and Banks and their attorneys be held in contempt for their activities relating to the above incident.

U. S. Attorney's Office, Minneapolis, Minnesota, advised prosecution will probably be declined concerning the above AFO incident inasmuch as successful prosecution cannot be achieved in view of the comments made by USDJ Nichol wherein he suggested that a citizen's arrest could be executed outside the Federal Building.

AUSA, Minneapolis, intends to send defense attorneys for Banks and Means a letter advising that any attempted illegal citizen's arrest of an FBI Agent could result in Federal prosecution and further plans to issue a press release concerning this decision.

HWA:erg

yfc *K* *RGS* *SM*
[Signature]

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

JUN 01 1974

TELETYPE

NR017 MP CODED

11:05PM NITEL MAY 31, 1974 DCW

TO DIRECTOR (ATTN: GENERAL CRIMES UNIT,
CRIMINAL SECTION, GID)

NEW ORLEANS

FROM MINNEAPOLIS (89-206) (P) FOUR PAGES

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SA

AFO;

WOUNDED KNEE RELATED.

RE MINNEAPOLIS TELETYPE TO FBI HEADQUARTERS AND NEW
ORLEANS, MAY 30, 1974.

AUSA [REDACTED] SIOUX FALLS, SOUTH DAKOTA, ADVISED
THAT HIS OFFICE IS CONSIDERING PRESENTING AN AFFIDAVIT TO
U. S. DISTRICT JUDGE FRED J. NICHOL AT USDC, ST. PAUL,
MINNESOTA, ON THE MORNING OF MONDAY, JUNE 3, 1974, REQUESTING
THAT DEFENDANTS RUSSELL MEANS AND DENNIS BANKS AND THEIR
ATTORNEYS BE HELD IN CONTEMPT FOR THEIR ACTIVITIES MAY 29, 1974,
IN REGARD TO THE ATTEMPTED CITIZEN'S ARREST OF SA [REDACTED]
END PAGE ONE

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REC-311

EX-110

JUN 21 1974

56 JUL 18 1974

PAGE TWO

MP 89-206

[REDACTED] [REDACTED] STATED IT WAS OBVIOUS TO THE U.S. ATTORNEY'S OFFICE THAT THIS ATTEMPTED CITIZEN'S ARREST WAS STAGED IN COURT FOR THE BENEFIT OF PRESS PUBLICITY AND TO SWAY THE JURY.

U.S. ATTORNEY'S OFFICE, MINNEAPOLIS, MINNESOTA, ADVISED THIS DATE THEY ARE PROBABLY GOING TO DECLINE PROSECUTION CONCERNING AFO IN REGARD TO SA [REDACTED] BECAUSE SUCCESSFUL PROSECUTION COULD NOT BE ACHIEVED, SPECIFICALLY BECAUSE OF COMMENTS OF FEDERAL JUDGE NICHOL IN USDC, ST. PAUL, MINNESOTA, CONCERNING THE CITIZEN'S ARREST. THE JUDGE COMMENTED TO BANKS AND MEANS THAT HE WOULD NOT ALLOW THEM TO EXECUTE A CITIZEN'S ARREST IN FEDERAL COURT OR IN THE FEDERAL COURT HOUSE BUILDING BUT SUGGESTED THAT SUCH AN ARREST COULD BE EXECUTED BY THEIR FRIENDS OR AGENTS OUTSIDE THE FEDERAL BUILDING. AUSA [REDACTED] STATED THAT HE INTENDS TO SEND DEFENSE ATTORNEYS FOR BANKS AND MEANS A LETTER EXPLAINING THAT HIS OFFICE WILL TAKE NO ACTION

END PAGE TWO

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PAGE THREE

MP 89-206

CONCERNING ASSAULT COMPLAINTS BY [REDACTED] AND [REDACTED]

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[REDACTED] AND THAT FURTHERMORE CITIZEN'S ARRESTS ON FBI AGENTS ARE ILLEGAL. HE EXPECTS TO PUT IN THE LETTER THAT ANY ATTEMPTED ILLEGAL CITIZEN'S ARRESTS OF AN FBI AGENT COULD RESULT IN FEDERAL PROSECUTION OF THE INDIVIDUALS ATTEMPTING SUCH AN ARREST FOR AFO OR OBSTRUCTION OF JUSTICE. HE FURTHER STATED THAT HE PLANNED TO ISSUE A PRESS RELEASE CONCERNING THE ABOVE DECISION AND CONTENTS OF PROPOSED LETTER TO DEFENSE ATTORNEYS. PRIOR TO TAKING THIS ACTION USA DESIRES [REDACTED] AND [REDACTED] BE INTERVIEWED.

SPECIAL AGENTS WERE BRIEFED CONCERNING THE ENTIRE CURRENT AIM PROBLEM AND SPECIAL EMPHASIS WAS PLACED ON PERSONAL SAFETY FOR ALL EMPLOYEES.

END PAGE THREE

PAGE FOUR

MP 89-206

ADMINISTRATIVE:

MINNEAPOLIS FBI IS IN FULL AGREEMENT WITH AUSA, MINNEAPOLIS,
DECISION TO NOT PROSECUTE IN CONNECTION WITH [REDACTED] ASSAULT
BECAUSE OF OBVIOUS INABILITY TO OBTAIN CONVICTION IN LIGHT
OF JUDGE NICHOL'S INSTRUCTIONS IN USDC, ST. PAUL, TO DEFENDANT'S
FOLLOWERS. SUCH AN UNSUCCESSFUL ATTEMPT TO PROSECUTE WOULD ONLY
GIVE THE AIM MILITANTS AND THEIR ATTORNEYS ADDITIONAL FAVORABLE
PRESS COVERAGE AT THE EXPENSE OF THE FBI AND ^{U. S. ATTORNEY'S} ~~U. S. ATTORNEY'S~~
OFFICE.

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FBI HEADQUARTERS WILL BE KEPT ADVISED OF PERTINENT
INFORMATION.

END

DLM FBI HQ CLR

cc: Mr. Mintz

Mr. [REDACTED]

Mr. [REDACTED]

6/6/74 JEG:dt

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029A

INDIANS 5-30

DAY LD

ST. PAUL, MINN. (UPI) -- SUPPORTERS OF AMERICAN INDIAN MOVEMENT LEADERS RUSSELL MEANS AND DENNIS BANKS SURROUNDED THE FEDERAL COURTHOUSE WEDNESDAY IN AN EFFORT TO "ARREST" AN FBI AGENT WHO ESCAPED THROUGH CONNECTING SKYWAYS.

THE AGENT, WHO HAD TESTIFIED IN THE WOUNDED KNEE TRIAL AGAINST MEANS AND BANKS, FLED THROUGH THE PASSAGES CONNECTING COURTHOUSE BUILDINGS, AS FELLOW AGENTS SCUFFLED WITH AIM SUPPORTERS. ONE INDIAN WAS KNOCKED TO THE GROUND.

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THE FBI WOULD NOT COMMENT ON THE INCIDENT BUT BANKS, CHARGED ALONG WITH MEANS WITH 10 FELONIES IN CONNECTION WITH THE WOUNDED KNEE TAKEOVER, DID.

"WE'RE PLANNING TO ASK FOR A FUGITIVE WARRANT FOR UNLAWFUL FLIGHT," SAID BANKS. "WE'RE ALSO GOING TO SUBPOENA HIM," HE SAID OF THE AGENT.

"WE'VE ISSUED AN ORDER TO ARREST ALL FBI AGENTS THAT COMMIT ACTS OF PERJURY DURING THE WOUNDED KNEE TRIAL OR WHO INTEND TO INTIMIDATE, HARASS, INJURE OR MAIM IN ANY WAY ANY INDIAN PERSON THAT WE INTEND TO CALL AS WITNESS," BANKS SAID.

A [REDACTED] HAD TESTIFIED THAT HE WAS ONE OF SEVERAL AGENTS WHO USED A TELEPHONE ON A ROAD BLOCK TO OVERHEAR CONVERSATIONS BY OCCUPANTS OF WOUNDED KNEE, S.D., DURING LAST YEAR'S OCCUPATION.

AT THE END OF THE TESTIMONY, BANKS AND MEANS, GRANTED PERMISSION TO QUESTION TRIAL WITNESSES, ATTEMPTED TO MAKE A CITIZENS ARREST, CHARGING [REDACTED] WITH VIOLATING THE FEDERAL WIRE TAP LAW.

U.S. DISTRICT COURT JUDGE FRED NICHOL, HEARING THE CASE, HAD OTHER IDEAS.

"NO ONE IS ARRESTED IN THE COURT ROOM EXCEPT BY ORDER OF THE COURT," NICHOL SAID.

89-2881
NOT RECORDED

JUN 5 1974

WASHINGTON CAPITAL NEWS SERVICE

57 JUN 1 1974

F/56

A file
 6/5/74
 6/5/74

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 Laboratory _____
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"WE IMMEDIATELY RECESSED COURT," BANKS SAID. "OUTSIDE ANOTHER ATTEMPT WAS MADE TO PLACE HIM UNDER CITIZENS ARREST AFTER WE NOTIFIED ST. PAUL POLICE."

EARLIER WEDNESDAY, NICHOL WARNED CHIEF PROSECUTOR R.D. HURD THAT THE CHARGE AGAINST MEANS AND BANKS OF ILLEGAL POSSESSION OF MOLOTOV COCKTAILS MAY BE DISMISSED UNLESS THE PROSECUTION CAN SHOW A CONNECTION BETWEEN THE DEFENDANTS AND THE FIREBOMBS.

THE MOLOTOV COCKTAILS WERE FOUND IN A CAR WHICH WAS SEARCHED AT A ROAD BLOCK NEAR WOUNDED KNEE MARCH 6, 1973. BANKS AND MEANS WERE NOT AMONG THE CAR'S FOUR OCCUPANTS.

THE CHARGE IS ONE OF 10 AGAINST THE TWO AIM LEADERS.

UPI 05-30 02:58 AED.

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE MINNEAPOLIS	OFFICE OF ORIGIN MINNEAPOLIS	DATE 8/12/74	INVESTIGATIVE PERIOD 6/7/74 - 8/9/74
TITLE OF CASE CHANGED [redacted] aka SA [redacted] - [redacted]		REPORT MADE BY SA [redacted]	TYPED BY mjf
		CHARACTER OF CASE AFO	

Title is marked changed to reflect the true name of the subject.

b6
b7c

REFERENCE:

Minneapolis report of Special Agent [redacted] dated June 3, 1974.

- C -

ADMINISTRATIVE:

New Orleans Division is being supplied a copy of this report for information as victim is currently assigned that division.

ACCOMPLISHMENTS CLAIMED					<input checked="" type="checkbox"/> NONE	ACQUIT-TALS	CASE HAS BEEN: PENDING OVER ONE YEAR <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
CONVIC.	FUG.	FINES	SAVINGS	RECOVERIES			
APPROVED [Signature] SPECIAL AGENT IN CHARGE						DO NOT WRITE IN SPACES BELOW	
COPIES MADE: 4 - Bureau 1 - United States Attorney, Minneapolis, Minnesota 1 - New Orleans (Information) 1 - Minneapolis (89-206) Dissemination Record of Attached Report						89-2881- [redacted] 3 AUG 19 1974 ST-103 MCT-7 CH 4T	
Agency	Request Recd.	Date Fwd.	How Fwd.	By	[redacted]		
1-215534-205		9/4/74	6-14	F95	[redacted]		
By [redacted]					[redacted]		

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATIONCopy to: 1 - United States Attorney,
Minneapolis, Minnesota

Report of: [REDACTED]

Office:

Minneapolis,
Minnesotab6
b7c

Date: August 12, 1974

Field Office File #: 89-206

Bureau File #:

Title: [REDACTED]

Character: ASSAULTING FEDERAL OFFICER

Synopsis:

Continuous contact maintained with AUSA [REDACTED] regarding his prosecutive opinion. [REDACTED] advised FBI interview of [REDACTED] requested of WILLIAM KUNSLER, [REDACTED] attorney. [REDACTED] has not contacted FBI, Minneapolis, for interview. [REDACTED] injured in automobile accident 6/19/74, Groton, South Dakota. Hospitalized University of Minnesota Hospital, Minneapolis, Minnesota, and released on 7/25/74. On 8/9/74, [REDACTED] advised of declination in this matter based on lack of prosecutive merit due to the subject misconstruing statements made by United States District Judge FRED J. NICHOL in United States District Court, St. Paul, Minnesota.

- C -

Details:

MP 89-206
WJM:dlk
(1)

On June 7, 1974, Assistant U. S. Attorney, [redacted] was contacted regarding his decision to prosecute [redacted] for assaulting SA [redacted] New Orleans Division. Mr. [redacted] advised that he was withholding his prosecutive opinion in this matter pending an offer to Wounded Knee Defense/Offense Committee attorney WILLIAM KUNTZLER to make available [redacted] and [redacted] for interview by the Minneapolis Office of the FBI. Mr. [redacted] advised that he has not yet been able to contact Mr. KUNTZLER.

On June 10, 1974, Assistant U. S. Attorney, [redacted] advised that he had contacted Mr. KUNTZLER and Mr. KUNTZLER advised him that he would have to discuss this matter with his clients, [redacted] and [redacted] before he could give him an answer relative to the interview. [redacted] advised that he would give KUNTZLER and his clients a reasonable amount of time to comply with this offer before he supplies his prosecutive opinion.

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On June 18, 1974, [redacted] U. S. Probation Service, Minneapolis, Minnesota, telephone number 725-2677, telephonically contacted the St. Paul Office of the FBI and advised that he knew the true identity of [redacted]. He advised that [redacted] true name is [redacted] and he then made available [redacted] description.

On June 20, 1974, SA BRYAN J. MOGEN, Aberdeen Resident Agency, telephonically contacted the St. Paul Resident Agency and advised that [redacted] also known as [redacted] had been involved in an automobile accident near Groton, South Dakota, and that he had been treated at St. Lukes Hospital, Aberdeen, South Dakota. MOGEN advised that this accident occurred on June 19, 1974. He advised that [redacted] condition was considered critical and that he had been transported to the University of Minnesota Hospital, Minneapolis, Minnesota.

On June 21, 1974, [redacted] Intensive Care Unit, University of Minnesota Hospital, Minneapolis, Minnesota, telephone number 373-8484, was telephonically contacted and she advised that an individual by the name of [redacted] was in Unit #44, in the Intensive Care Unit. She advised that [redacted] had suffered a concussion and also fractures in the head area and a fracture of the left forearm along with other injuries. She advised that his condition is currently stable. She stated that he would probably be in the Intensive Care Unit for several days and would then remain in the hospital for several weeks thereafter.

MP 89-206

On August 1, 1974, [redacted] [redacted] University of Minnesota Hospital, University of Minnesota, telephone number 373-8248, advised that [redacted] was discharged from the hospital on July 25, 1974. She advised that he listed a local address of American Indian Movement Headquarters, 553 Aurora Street, St. Paul, Minnesota, and a permanent address for his parents, Mr. and Mrs. [redacted] Rhodehiss, North Carolina. She advised that [redacted] has a current balance of \$7,000 for his hospital stay and treatment.

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Continuous contact has been maintained with [redacted] [redacted] Assistant United States Attorney, Minneapolis, Minnesota, regarding his prosecutive opinion in this matter.

[redacted] [redacted] Assistant United States Attorney, Minneapolis, Minnesota, advised that his office is declining prosecution in this matter based on the fact that the subject, [redacted] also known as [redacted] [redacted] would justify actions relative to the attempted citizen's arrest of Special Agent [redacted] as a result of the statements made by United States District Judge FRED J. NICHOL in United States District Court, in St. Paul, Minnesota. [redacted] advised that since the statements made by Judge NICHOL in court could be construed in more than one way, it would not appear likely that a successful prosecution could be obtained in this instance.

Airtel

6-20-74

To: SAC, Minneapolis (70-6382) (P)

From: Director, FBI

DENNIS JAMES BANKS

ET AL.

CIR - BURGLARY

(WOUNDED KNEE RELATED)

PERSONAL ATTENTION

- 1 - Mr. [REDACTED]
- 1 - Mr. Gordon
- 1 - Mr. Mintz
- 1 - Mr. [REDACTED]

b6
b7C

ReBunitel 6-4-74. Also reference MPren of SA

[REDACTED] captioned, [REDACTED] SA

[REDACTED] - [REDACTED] "Assaulting Federal Officers,"

dated 6-3-74.

This airtel was prepared as a result of and subsequent to events that transpired in USDC, District of South Dakota, Western Division, at St. Paul, Minnesota, before the Honorable Fred J. Nichol on 5-29-74, in the case of the United States of America, Plaintiff v. Dennis Banks - Defendant (CR. 73-5034, CR. 73-5062) and United States of America, Plaintiff v. Russell Means - Defendant (CR. 73-5035, CR. 73-5063). Defendants, Banks and Means, attempted to effect a citizen's arrest in the courtroom on 5-29-74 of Government witness, SA [REDACTED] for an alleged felony violation of Title 18, Section 2511 (Wiretapping Statute). U. S. District Judge Nichol refused to allow the defendants to make this arrest in the courtroom. Outside the courtroom SA [REDACTED] was confronted by Banks and private individuals who were sympathizers of the American Indian Movement (AIM) who continued to attempt to effect this citizen's arrest. The incident occurred as SA [REDACTED] escorted by other SAs of the FBI and officers of the St. Paul, Minnesota, Police Department, attempted to leave the Federal Building in St. Paul. Defendant Banks and these private individual sympathizers were not permitted to effect this arrest of SA [REDACTED]

1 - Minneapolis (89-206)

JCG:kms
(9)

SEE NOTE PAGE 4.

89-2881-
NOT RECORDED

46 JUL 16 1974

DUPLICATE YELLOW

96
57 JUL 19 1974

ORIGINAL FILED IN 76-2403-273

Airtel to SAC, Minneapolis
Re: DENNIS JAMES BANKS

The contents of this airtel are a result of legal research by SAs, Legal Counsel Division, FBIHQ, following the above-mentioned incident. It pertains to the question of whether (1) a Federal judge has the authority to prevent intimidation of witnesses in a case pending before the court. It also pertains to (2) whether there is authority to support the conclusion that attempted arrests (including citizens' arrests) of SAs of the FBI by defendants and/or their sympathizers subsequent to the testimony of these SAs appear to constitute such misbehavior as to intimidate these witnesses and obstruct the administration of justice.

Both South Dakota and Minnesota (trial site) law specify that a private person may arrest another for (1) a public offense (including a misdemeanor) committed or attempted in his presence; (2) when the person arrested has committed a felony, although not in his presence; and (3) when a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it. (S.D.C.L. 23-22-14 and M.S.A. § 629.37.) Review of the United States Code fails to reveal any statutory authority for a citizen's arrest. The relatively few Federal cases that have faced the question of whether Federal law permits such an arrest have allowed a private person to make an arrest if a Federal felony has actually been committed and the person has good reason to believe the defendant is guilty of the crime. (United States v. Boyd, 300 F. 540.)

Assuming that no felony had been committed by SAs of the FBI, it would appear that under South Dakota, Minnesota, and Federal law a citizen's arrest here would be illegal, for the above jurisdictions require that a felony must in fact have been committed to sustain the legality of a citizen's arrest. Accordingly, the Federal court here appears to possess the authority to punish the activity by defendants as misbehavior in the court's presence "or so near thereto" as to obstruct the administration of justice. (Title 18, U.S.C., § 401 (1).)

Assume, however, this court would be reluctant to proceed under Title 18, U.S.C., Section 401 (1), because of the possibly open question of whether a felony had been committed by SAs of the FBI. (It may be that this question could be only answered by an appropriate judicial proceeding.) The question is then raised as to whether citizens' arrests could, subject to a court order prohibiting them, constitute harassment of witnesses.

Airtel to SAC, Minneapolis
Re: DENNIS JAMES BANKS

Title 18, U.S.C., Section 401 (3), provides that a United States court has the power to punish such contempt of its authority as resistance or disobedience to its lawful order. Case law tells us that Congress did not define what acts constitute contempt but left this to the discretion of the courts. (U. S. v. Huff, 206 F. 700.) The purpose of the contempt power is to vindicate the authority and dignity of the court. (Chisolm v. Caines, 121 F. 397.) Contempt is an intentional act committed in defiance of the authority and dignity of the court. (U. S. v. Panico, 308 F.2d 125.) The courts have a right to conduct their business in an untrammelled way and possess means for punishing contempt when any conduct tends to prevent the orderly discharge of judicial functions. (U. S. v. Anonymous, 243 F. Supp. 496.) The basis for the court's contempt power is the need to protect the judicial process from willful impositions, particularly those designed to impede the machinery of justice. (In re Brown, 454 F.2d 999.)

Contempts need not be committed within the presence of the court. (O'Malley v. U. S., 128 F.2d 676.) Contempts are constructive when they are committed outside the presence of the court and tend by their operation to interrupt, obstruct, embarrass, or prevent the orderly administration of justice. (Indianapolis Water Co. v. American Steamboard Co., 75 F. 972.)

Instances such as attempting to make citizens' arrests of SAs of the FBI for alleged felony violations by defendants and/or private individuals, AIT sympathizers, could intimidate future Government witnesses and thus have an adverse effect on the Government's case. As you have previously noted, this activity is closely related to the Banks and Means trial presently in progress. Thus, even though this activity takes place outside the presence of the courtroom, such behavior could clearly obstruct, interrupt, or prevent the orderly administration of justice. Accordingly, it appears U. S. District Judge Nichol in charge of the Banks and Means matter could possibly possess the authority to order defendants and their sympathizers to cease and desist from their attempted illegal arrests (outside of the courtroom and courthouse) of FBI SAs testifying at the trial.

Minneapolis should promptly contact the appropriate USAs and Government prosecuting attorneys and discuss orally with them the legal research information as set out above. Consideration should then be given to having the appropriate

Airtel to SAC, Minneapolis
Re: DENNIS JAMES BANKS

USA discuss this matter, preferably in the presence of the SAC or ASAC with Judge Nichol in chambers, to determine whether the court has the authority and would consider issuing an order for defendants and their sympathizers to cease and desist from their attempted illegal arrests (outside of the courtroom and Federal Building in St. Paul) of those SAs testifying in the Banks and Means case.

As you were previously advised, FBIHQ is concerned with the personal safety of FBI Agents and clerical personnel at the Wounded Knee leadership trial and the non-leadership AIM trials. It is extremely important that the USAs take all legal steps that may be taken to protect our personnel and other Government witnesses. As you were previously instructed, the Bureau is to be kept advised on an expeditious basis of any harassment or attempted harassment of FBI personnel by members of the AIM and their sympathizers. Advise results of your contact with the appropriate USAs and U. S. District Judge Nichol concerning this matter.

NOTE: See memorandum from SA [redacted] to Mr. Mintz captioned, Dennis James Banks, et al.; CIR - Burglary, (Wounded Knee Related) dated June 10, 1974, (original attached).

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b7c

PLAINTEXT

TELETYPE

NITEL

9/27/74

TO SAC, MINNEAPOLIS

1 - Mr. Gordon

FROM DIRECTOR, FBI

DENNIS JAMES BANKS; RUSSELL CHARLES MEANS; WOUNDED
KNEE LEADERSHIP TRIAL, ST. PAUL, MINNESOTA, CIR.

RE BUREAU TELEPHONE CALL TO MINNEAPOLIS SEPTEMBER 27,
1974.

MR. [REDACTED] ATTORNEY, REQUESTED A
STATISTICAL BREAKDOWN OF THE FOLLOWING MATTERS IN THE
MEANS AND BANKS CASE. IT IS REALIZED SOME OF THIS INFORMATION
CAN BE RESEARCHED AT THE BUREAU; HOWEVER, IT IS READILY
AVAILABLE TO THE MINNEAPOLIS OFFICE THROUGH THE U. S.
ATTORNEY'S OFFICE, SIOUX FALLS, SOUTH DAKOTA.

b6
b7C

(1) THE NUMBER OF WITNESSES CALLED DURING THE ENTIRE
TRIAL OF MEANS AND BANKS

(2) THE NUMBER OF TIMES EACH WITNESS APPEARED

(3) THE NUMBER OF TRIAL DAYS.

MR. [REDACTED] ALSO REQUESTED, IF AVAILABLE ONLY, A
TRANSCRIPT OF AUSA RICHARD D. HURD'S INTERVIEW ON NATIONAL
TELEVISION DURING THE LATTER STAGES OF THE TRIAL ON OR

ABOUT SEPTEMBER 13 THROUGH 16, 1974.

REC-18

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Admin. _____
Comp. Syst. _____
Ext. Affairs _____
Files & Com. _____
Gen. Inv. _____
Ident. _____
Inspection _____
Intell. _____
Laboratory _____
Plan. & Eval. _____
Spec. Inv. _____
Training _____
Legal Coun. _____
Telephone Rm. _____
Director Sec'y _____

JCG/dw
(3)

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

SEP 27 1974

TELETYPE

MAIL ROOM ☐

TELETYPE UNIT ☐

EX-103

100-11

CH 39

SEP 30 1974

89-2881-9

Nitel to SAC, Minneapolis
RE: DENNIS JAMES BANKS

MINNEAPOLIS IS NOT REPEAT IS NOT TO MAKE ANY CONTACT
WITH THE MEDIA TO OBTAIN THIS TRANSCRIPT IF NOT READILY
AVAILABLE TO THE MINNEAPOLIS OFFICE.

ADMINISTRATIVE: FBIHQ HAS BEEN FURTHER REQUESTED (AND
FBIHQ WILL HANDLE, MINNEAPOLIS TAKE NO ACTION AT THIS TIME)
BY MR. [] TO FURNISH CERTAIN NEWSPAPER ARTICLES FROM THE
MINNEAPOLIS PAPERS ON THE ABOVE-MENTIONED DATES PERTAINING
TO MR. HURD'S STATEMENT THAT THE GOVERNMENT WOULD NOT ALLOW
DELIBERATION TO CONTINUE WITH 11 JURORS. IN THE EVENT
THE SPECIFIC ARTICLES CANNOT BE LOCATED, MINNEAPOLIS WILL
BE CONTACTED TO ATTEMPT TO FURNISH SAME.

b6
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83 01 3 30 11 11
- 2 -

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FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

JAN 23 1975

TELETYPE

NR 006 MP CODED

10:45 PM NITEL JANUARY 23, 1975 DSC

TO DIRECTOR

FROM MINNEAPOLIS (70-6864)

DENNIS BANKS; CIR - BURGLARY; ET AL.

Dennis James Banks

WILLIAM JANKELOW, SOUTH DAKOTA ATTORNEY GENERAL, ADVISED
TENTATIVE DATE FOR TRIAL OF BANKS IS NOW FEBRUARY 10, 1975, P
YET DETERMINED.

HE ADVISED WHEN HE RECEIVES A FIRM DATE AND PLACE HE WOULD
ADVISE.

BUREAU WILL BE ADVISED OF DEVELOPMENTS.

END

Assoc. Dir.	_____
Dep. A.D.-Adm.	_____
Dep. A.D.-Inv.	_____
Asst. Dir.:	_____
Admin.	_____
Comp. Syst.	_____
Ext. Affairs	_____
Files & Com.	_____
Gen. Inv.	_____
Ident.	_____
Inspection	_____
Intell.	_____
Laboratory	_____
Plan. & Eval.	_____
Spec. Inv.	_____
Training	_____
Legal Coun.	_____
Telephone Rm.	_____
Director Sec'y	_____

[Handwritten signatures and initials]

CH 38

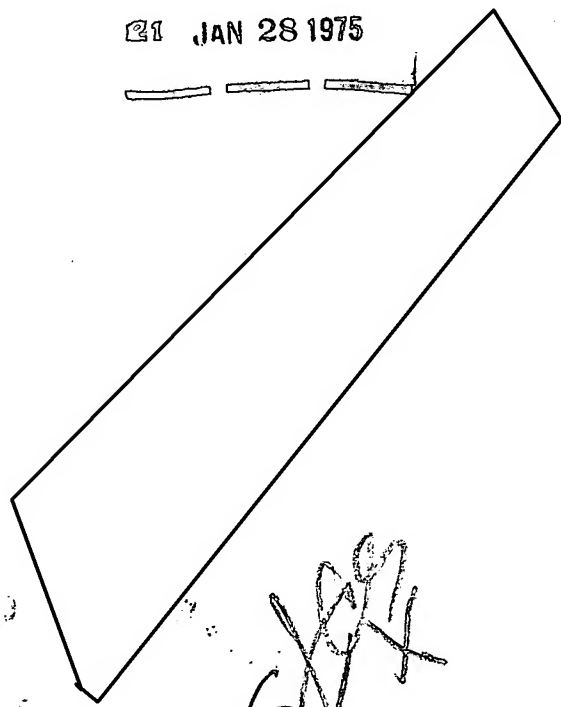
REC-8

MCT-30

89-2881-10

b6
b7c

21 JAN 28 1975



[Handwritten signature]

56 FEB 13 1975

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI

DATE: 2-26-75

FROM : *WTVJH* SAC, ST. LOUIS (157-5315) P

SUBJECT: DENNIS JAMES BANKS;
RUSSELL CHARLES MEANS;
WOUNDED KNEE LEADERSHIP TRIAL,
ST. PAUL, MINNESOTA
CIR - BURGLARY, ETC.
OO: Minneapolis

Re Minneapolis letter to St. Louis dated 2-10-75
and St. Louis letter to Bureau dated 1-22-75.

Enclosed for Bureau and Minneapolis is one
copy of Appellant's Brief filed 2-19-75.

On 2-21-75, [REDACTED] U. S.
Court of Appeals, 8th Circuit, St. Louis, Mo., provided
a copy of Appellant's Reply Brief filed 2-19-75 and
advised that no further action had occurred in this
case.

One copy of this brief is being maintained in
St. Louis file. St. Louis will continue to follow
and report disposition of this case.

- 2 - Bureau (Enc. 1)
- 2 - Minneapolis (70-6832 sub P) (Enc. 1)
- 2 - St. Louis
 - 1 - 157-5315
 - 1 - 66-2347

JCH:ss
6

ENCLOSURE
ENCLOSURE ATTACHED

REC-4

EX-10

MAR 4 1975



7 MAR 14 1975

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Nos. 74-1784, 74-1785, 74-1786, and 74-1787

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant

v.

RUSSELL MEANS and DENNIS BANKS,

Appellees

FILED

FEB 19 1975

ROBERT C. TUCKER
CLERK

Copy 19

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA

REPLY BRIEF FOR APPELLANT

JOHN C. KEENEY, Acting
Assistant Attorney General

WILLIAM F. CLAYTON
United States Attorney

SHIRLEY BACCUS-LOBEL
Attorney
United States Department
of Justice

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IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 74-1784, 74-1785, 74-1786, and 74-1787

UNITED STATES OF AMERICA,

Appellant;

v.

RUSSELL MEANS and DENNIS BANKS,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA

REPLY BRIEF FOR APPELLANT

ISSUES PRESENTED FOR REVIEW

Whether this Court has jurisdiction to hear this appeal under
18 U.S.C. 3731.

Whether the trial court's dismissal on grounds of prosecu-
torial misconduct constitutes an acquittal.

United States v. Brown, 481 F.2d 1035 (8th Cir. 1973)

United States v. Marion, 404 U.S. 307 (1971)

UNITED STATES V. JORN, 400 U.S. 470 (1971)

UNITED STATES V. SISSON, 399 U.S. 267 (1970)

UNITED STATES V. JARAMILLO and STURDEVANT, Nos. 74-1651 and 1652,
decided January 31, 1975 (8th Cir. slip op.)

United States v. Banks, _____ F. Supp. _____, (D. S.Dakota,
decided August 20, 1974)

RULE 29(a), FEDERAL RULES OF CRIMINAL PROCEDURE
18 U.S.C. 3731

UNITED STATES V. WHITTED, 454 F.2d 642 (8th Cir. 1972)

Gori v. United States, 367 U.S. 364 (1961)

In re United States, 268 F.2d 556 (1st Cir. 1961)

Whether this Court's jurisdiction under 18 U.S.C. 3731 is otherwise barred by the Double Jeopardy Clause.

WADE V. HUNTER, 336 U.S. 684 (1949)
ILLINOIS V. SOMERVILLE, 410 U.S. 458 (1973)
Logan v. United States, 144 U.S. 263 (1892)
SIMMONS V. UNITED STATES, 142 U.S. 148 (1891)
United States v. Perez, 9 Wheat. 579 (1824)
PARKER V. UNITED STATES, No. 74-1636, decided December 13, 1974
(8th Cir., slip op.)
RULE 23(b), FEDERAL RULES OF CRIMINAL PROCEDURE
Patton v. United States, 281 U.S. 276 (1930)
Singer v. United States, 380 U.S. 24 (1965)
Rule 23(a), Federal Rules of Criminal Procedure
United States v. Brumbaugh, 471 F.2d 1128 (6th Cir. 1973);
concurring opinion of Judge McCree)

Whether the specifications of misconduct are substantiated by the record.

UNITED STATES V. WHITTED, 454 F.2d 642 (8th Cir. 1972)
UNITED STATES V. DOOLING, 406 F.2d 192 (2nd Cir. 1969)
certiorari denied, sub nom. Persico v. United States,
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UNITED STATES V. BANKS, 374 F. Supp. 321 (D. S.Dakota, 1974)
UNITED STATES V. AUGENBLICK, 393 U.S. 348 (1968)
UNITED STATES V. HEATH, 260 F.2d 623 (9th Cir. 1958)
United States v. Bryant, 439 F.2d 642 (D.C. Cir. 1971)

I. THIS COURT HAS JURISDICTION OF THIS APPEAL
UNDER 18 U.S.C. 3731.

We can hardly agree with appellees' suggestion in Part II of their Argument that the circumstances which purportedly support these allegations of misconduct are irrelevant (Br. at p. 46, fn.).^{1/} No more can we accept the view that a scrutiny of the trial court's action, which necessarily entails an examination of the basis for that action, is irrelevant to appellees' challenge to the Court's jurisdiction to hear this appeal under 18 U.S.C. 3731. United States v. Jorn, 400 U.S. 470, 478, n. 7 (1971); United States v. Sisson, 399 U.S. 267, 279, n. 7 (1970).

A. THE TRIAL COURT'S DISMISSAL OF THE REMAINING
COUNTS OF THE INDICTMENTS ON GROUNDS OF
GOVERNMENT MISCONDUCT WAS NOT AN ACQUITTAL.

Appellees have contended that the Double Jeopardy Clause of the Fifth Amendment precludes this appeal from the trial court's dismissal of these indictments on grounds of government misconduct.^{2/} Despite the plethora of authorities cited, the characterization of this dismissal as an "acquittal" appears to be the crux of the argument advanced.

^{1/} "Br." refers to appellees' brief herein. "Gov. Br." refers to the brief previously filed by appellant. "Op." refers to the trial court's written memorandum decision of October 9, 1974.

^{2/} It is undisputed here (Br. at 23) that the Criminal Appeals Act, as amended by the Omnibus Crime Control and Safe Streets Act of 1970 (84 Stat. 1890), authorizes a government appeal from any "decision, judgment, or order of the district court dismissing an indictment or information," except "where the double jeopardy clause of the United States Constitution prohibits further prosecution." See United States v. Brown, 481 F.2d 1035, 1039-1040 (8th Cir. 1973).

The order of the district court was not based upon a determination that the evidence presented to the jury was insufficient to establish appellees' guilt on the remaining counts of the indictments; indeed, the district court had twice previously denied appellees' motion for judgments of acquittal on these counts. Moreover, in its written decision the court below expressly stated that it was "not making an evaluation of the sufficiency of the evidence" and that "a judgment of acquittal would be inappropriate" (Op. at p. 3).^{3/} The dismissal "rested on grounds that had nothing to do with guilt or innocence or the truth of the allegations in the indictment" United States v. Marion, 404 U.S. 307, at 312 (1971).^{4/}

^{3/} We are, of course, aware that this Court is not bound by the characterization the trial court has attached to its decision. United States v. Jorn, *supra*, 400 U.S. at 478, n. 7; United States v. Sisson, *supra*, 399 U.S. at 279, n. 7. We think it quite clear, however, that the trial court correctly denominated its action as a dismissal. Moreover, any characterization of its action as an "acquittal" is plainly at odds with the trial court's express refusal to find that the evidence was insufficient.

^{4/} In Marion, the district court had granted a pretrial motion to dismiss the indictment on the ground of unreasonable delay in bringing the indictment, stating that the defense of the case was "bound to have been seriously prejudiced by the delay of at least some three years in bringing the prosecution that should have been brought in 1967, or at the very latest early 1968" (404 U.S. at 310). The Court, construing the old Criminal Appeals Act, concluded that the order of the district court could be appealed, rejecting the notion that the district court's ruling could be considered a determination relating to the guilt or innocence of the accused (404 U.S. at 312).

An analogous question is presently before the Supreme Court in United States v. Wilson, 492 F.2d 1345 (3rd Cir. 1974), certiorari granted May 28, 1974, No. 73-1395. The question presented there is whether the Double Jeopardy Clause bars an appeal by the United States from an order of the district court, entered after a jury verdict of guilt, dismissing an indictment on the ground of unnecessary pre-indictment delay. There, the court of appeals, relying on United States v. Sisson, *supra*, concluded that the trial court's dismissal was in effect an acquittal. We have submitted therein that the dismissal was not an acquittal and that the

(Cont'd)

Relying upon United States v. Sisson, supra, 399 U.S. 267 and United States v. Jorn, supra, 400 U.S. 470, 478, appellees nevertheless contend that the trial court's action was an "acquittal" because, they assert, it was a "final disposition on the merits" (Br. at 24) predicated upon facts adduced at trial. However, the nexus between that proposition and the character of the trial court's action is not established.

While appellees appear to concede that in order to qualify as an acquittal the trial court's action must have constituted a "final disposition on the merits" based upon evidence adduced at trial, they at the same time argue that Sisson "holds that a decision which depends on facts developed at trial is a directed acquittal" (Br. at 24). The decision in Sisson does not support that proposition.

In Sisson the defendant was convicted after a jury trial of failing to report for induction. Thereafter, the district court terminated the prosecution on the basis that the evidence was insufficient to sustain the defendant's guilt, a determination which rested upon a conclusion of law which the government regarded as erroneous. ^{5/} The Supreme Court

4/ contrary conclusion of the court of appeals is predicated upon an erroneous construction of Sisson. Moreover, the Court in Marion concluded that a dismissal because of pre-indictment delay rested on grounds that had nothing to do with "guilt or innocence or the truth of the allegations in the indictment. . ." [404 U.S. at 312], while at the same time recognizing that a determination of the issue must sometimes await the events at trial [404 U.S. at 326].

5/ The government has argued before the Supreme Court that the question whether a trial court determination is an "acquittal" within the meaning of Sisson is not necessarily dispositive on the question of the government's right of appeal. United States v. Jenkins, 490 F.2d 868 (2nd Cir. 1973), certiorari granted, May 28, 1974, No. 73-1513. Assuming, arguendo, that the Double Jeopardy Clause of the Fifth Amendment bars a government appeal from any decision properly characterized as an acquittal [United States v. Jaramillo and Sturdevant, Nos. 74-1651 and 1652, decided January 31, 1975 (8th Cir., slip op.)], that proposition of course has nothing to do with

concluded that the district court's determination was an acquittal because it constituted "a legal determination on the basis of facts adduced at trial relating to the general issue of the case"

[Id. at 290, n. 19]. In support of that view the Court noted as follows:

If a jury had been so instructed [that is, in accordance with the conclusion of law the government regarded as erroneous], there can be no doubt that its verdict of acquittal could not be appealed under §3731 no matter how erroneous the constitutional theory underlying the instructions. [Id. at 289].

In United States v. Jorn, supra, 400 U.S. at 478, n. 7, this formulation as to the "criterion of an 'acquittal'" is reiterated.

The notion that Sisson supports the proposition that any district court action involving a consideration of evidence adduced at trial^{6/} amounts to an acquittal is not only inconsistent with the result reached therein - a conclusion that the trial court's ruling went to the sufficiency of the evidence - but is inconsistent as well with the plain language of the decision. Had the Court in Sisson intended the proposition appellees have advanced here, there would have been no need for the qualifying phrase "relating to the general issue of the case."

That the essence of the concept of "acquittal" must be recognized as involving the failure of the prosecution to adduce sufficient evidence of the defendant's guilt is also clear from this Court's recent

^{5/} this case unless it can be shown that the trial court's decision here was in fact an "acquittal."

^{6/} As we show, infra, the trial court's action was not, for the most part, based upon that which might properly be considered evidence adduced at trial.

decision in United States v. Jaramillo and Sturdevant, Nos. 74-1651 and 1652, decided January 31, 1975. In Jaramillo, the defendants were charged with having unlawfully interfered, obstructed and impeded U.S. Marshals and agents of the F.B.I. engaged in the lawful performance of official duties incident to and during the commission of a civil disorder. The district court concluded there was insufficient evidence to prove beyond a reasonable doubt that the law enforcement personnel were engaged in the lawful performance of their duties due to evidence of military involvement at Wounded Knee [18 U.S.C. 1385]. The government appealed, contending that the district court's order was a dismissal and that, in any event, the Double Jeopardy Clause did not bar an appeal. In rejecting that contention, this Court observed:

We find no merit to the government's assertion that the determination was a dismissal. The trial judge decided rightly or wrongly after both parties rested that 'lawful engagement' and 'lawful performance' were essential elements of the government's case and had to be proved by it. It looked beyond the face of the record, considered all of the evidence adduced at trial and decided that the government had failed to meet its burden. This conclusion went to the very heart of appellees' guilt or innocence, and was properly characterized as an acquittal, because the trial judge determined, on the basis of the evidence developed at trial, that the proof was insufficient to support beyond a reasonable doubt the allegations of the indictment [slip op. at 5-7; footnotes omitted]

We also observe that the Federal Rules of Criminal Procedure provide a single standard for the entry of a judgment of acquittal -- "if the evidence is insufficient to sustain a conviction," Rule 29(a).

In order to characterize the decision below as an acquittal, then, it must appear not only that the decision is based on facts adduced at trial, but that the legal determination relates to the general issue of the case, that is, guilt or innocence (or, more specifically, the elements of the offenses charged). The legal determination here was misconduct by the government. The only legal theory by which government misconduct is arguably related to the guilt or innocence of an accused is entrapment. ^{7/} It is probably needless to say that none of these specifications of misconduct are amenable to treatment under that legal theory. There is, therefore, no theory by which the nexus between the alleged misconduct and the guilt or innocence of the defendants [the general issue of the case] can be established. Indeed, appellees do not even attempt to draw that nexus. As we noted in our main brief, there may be circumstances where government misconduct is such that a dismissal is warranted, but this has nothing whatever to do with the guilt or innocence of the accused. ^{8/}

^{7/} This of course is because entrapment relates to alleged misconduct coterminous with the commission of the alleged offense and arguably relevant to an element of the offense, intent or willfulness.

^{8/} Mr. Justice Harlan's hypothetical, alluded to above, poses an interesting question in this regard, for what conceivable instructions to the jury might have incorporated the ruling of the court below. If, as appellees contend, the trial court's decision was "a final disposition on the merits," there must be some legal basis on which the issues which comprise the ruling below might have been submitted to the fact-finding body, the jury.

In what manner was a "cover-up" of military involvement at Wounded Knee relevant to the guilt or innocence of these defendants on the remaining counts of the indictments.^{9/} And the so-called "intentional deception" of the court with regard to the alleged rape incident involving Louis Moves Camp, a specification of misconduct relating to an occurrence at the bench and out of the hearing of the jury, what is the relevancy of that occurrence to the guilt or innocence of the defendants. In what manner did the prosecutor's alleged misconduct in the "offering of [Alexander David Richards'] testimony that was directly contradicted by a document in his possession" (Op. at 11), relate to the guilt or innocence of these defendants, particularly when that testimony was stricken from the record with a firm instruction to the jury that it was to be disregarded.

Although appellees do not make this point, there can be no question that the trial court considered evidence adduced at trial in reaching the conclusion that the testimony of the witness Louis Moves Camp

^{9/} While we regard as frivolous any contention that a "cover-up" of military involvement was relevant to the guilt or innocence of these defendants on any charges in the indictments, it bears mentioning that the question of military involvement related to charges that had already been dismissed. United States v. Banks, _____ F. Supp. _____ (D. S. Dakota, decided August 20, 1974). The lawfulness of the military involvement at Wounded Knee was resolved by the trial court; this issue was not before the jury. Moreover, it is certain that no facts relating to the alleged "cover-up" were before the jury, because, as we point out in our main brief, there are no facts supporting that inference.

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"was, at least in part, false" (Op. at p. 8). It is equally clear that the trial court did not therefore consider the evidence insufficient to sustain the conviction. It is even more clear that the legal determination made by the trial court in this regard related to the obligations of the prosecutor, obligations - primarily of an unspecified investigatory nature - the trial court held had not been met. This alleged failure on the prosecutor's part is regarded as misconduct. Appellees would presumably nevertheless contend that this legal determination of misconduct, based entirely on findings of omission, constitutes an acquittal, that is, "a final disposition on the merits" (Br. at 24). While we think it plain that the trial court's legal determination in this regard did not amount to a conclusion with regard to sufficiency, we would point out that it is the purpose of the trial court's consideration of evidence adduced at trial which is logically relevant to an assessment of what the court in fact accomplished. A consideration of evidence is not per se an evaluation of the sufficiency of the evidence. Clearly the purpose here was to assess the prosecutor's conduct, not the defendants. The

10/ In this regard, we again note that the trial court expressly declined to find that this "instance of misconduct" alone was "sufficient to warrant dismissal" (Op. at 9). In apparent refutation of our argument that the dismissal must be set aside if any one of the specifications of misconduct is groundless (Gov. Br. at 76-77), appellees argue that the "cumulation of particular instances has a probative value immensely greater than any one of them alone" (Br. at p. 60). In making this point, appellees invoke the philosophical principle that the whole is often greater than the sum of its parts (Br. at 60, fn.). In doing so, appellees impart no significance to the term "sum".

process appellees would presumably invoke is too attenuated. "A judgment of acquittal would be appropriate only if the evidence at trial had been insufficient to sustain [the] conviction." United States v. Whitted, 454 F.2d 642, 646 (8th Cir. 1972).

Appellees place heavy reliance on Fong Foo v. United States, 369 U.S. 141 (1962), noting that the government in its brief in Jenkins (supra note 5) "implies that Fong Foo is not favored as it has allegedly been seldom cited by the Supreme Court" (Br. at 30). What the government did say with respect to Fong Foo, and we restate that argument here, is that the result there is questionable in that it attaches greater weight to labels than the Supreme Court has more recently condoned. United States v. Jorn, supra, 400 U.S. at 478, n. 7; United States v. Sisson, supra, 399 U.S. at 279, n. 7. It is not without significance in this regard that Fong Foo has been cited in but one Supreme Court opinion in the more than twelve years since it was decided [Will v. United States, 389 U.S. 90 (1967)]. In that opinion, it was cited in a manner which suggests that the Court viewed the decision in Fong Foo as reflecting little more than the proposition that, as a matter of policy, appeals by the United States in criminal cases are not favored "at least in part because they always threaten to offend the policies behind the double jeopardy prohibition, cf. Fong Foo v. United States, 369 U.S. 141 (1962)," (389 U.S. at 96), and that, in the absence of a statute authorizing an appeal (389 U.S. at 97, n. 5), "[m]andamus * * * may never be employed as a substitute for appeal in derogation of these clear policies. E.g., Fong Foo v. United States, 369 U.S. 141 (1962) * * *" (389 U.S. at 97).

Of course, even the suggestion in Will that appeals by the United States in criminal cases are "something unusual, exceptional, not favored" (389 U.S. at 96) is undermined by the present Criminal Appeals Act and its declaration that its provisions are to be construed liberally to effectuate its purpose of permitting an appeal in all cases in which the Constitution permits (18 U.S.C. 3731).

The novel circumstances present in Fong Foo were that the trial court directed verdicts of acquittal in the middle of the government's case on the basis of the "supposed lack of credibility in the testimony of the witnesses for the prosecution" and the "supposed improper conduct on the part of the Assistant United States Attorney who was prosecuting the case" (369 U.S. at 142). The Supreme Court, in holding that a writ of mandamus would not lie to test the validity of the trial court's action, regarded the following consideration as significant, if not crucial [369 U.S. at 143]:

The trial did not terminate prior to the entry of judgment as in Gori v. United States, 367 U.S. 364. It terminated with the entry of a final judgment of acquittal as to each petitioner.

In this case, on the other hand, the trial terminated with a mistrial, a result compelled by the incapacitation of a juror. Thus, while we do believe the decision in Fong Foo attaches a significance to labels which is at odds with later pronouncements of the Supreme Court, this distinction is not without significance in assessing the precedential value of Fong Foo here.

As we discuss more thoroughly, infra, the dismissal here occurred after a mistrial was compelled under circumstances where the Double Jeopardy Clause would not preclude retrial. Thus, the trial proceedings were aborted whereas in Fong Foo the Court believed that the trial had ended with a final judgment of acquittal which would bar a retrial. Here, on the other hand, an intervening event aborted the trial. There was no final judgment. Again, though we do believe that Sisson and Jorn, unlike Fong Foo, place a greater emphasis on substance than form, Fong Foo does suggest that the propriety of a retrial is to some, possible dispositive, extent governed by when the trial court's action occurred.^{11/} The suggestion implicit in the Court's distinction, and its citation to Gori v. United States, is that the propriety of the trial court's action would be subject to appellate scrutiny had there been, as here, an intervening event which terminated the trial prior to an entry of final judgment under circumstances where a retrial would have been permissible.

^{11/} We by no means intend to concede that when something occurs is dispositive on the question of what occurred. However, the question is whether, given the very brief and largely unelucidating per curiam decision in Fong Foo, it can reasonably be argued that it governs here, in the event it retains qualitative precedential value after Jorn and Sisson.

Moreover, Mr. Justice Harlan, the author of the opinion in Sisson, in his concurring opinion in Fong Foo, added this clarification:

Were I able to find, as Judge Aldrich did, that the District Court's judgment of acquittal was based solely on the Assistant United States Attorney's alleged misconduct, I would think that a retrial of the petitioners would not be prevented by the Double Jeopardy Clause of the Fifth Amendment. Even assuming that a trial court may have power, in extreme circumstances, to direct a judgment of acquittal, instead of declaring a mistrial, because of a prosecutor's misconduct - a proposition which I seriously doubt - I do not think that such power existed in the circumstances of this case. [369 U.S. at 143-144].

Mr. Justice Harlan's distinction is critical. The facts surrounding the allegation of misconduct in Fong Foo are fully enunciated in the opinion of the court of appeals therein. In re United States, 268 F.2d 556, 559-560 (1st Cir. 1961). A prosecution witness was asked by the trial court whether he had spoken with government counsel while testifying in the case. On the basis of the witness' affirmative response, the trial court concluded that government counsel had therefore tampered with a witness. While the ultimate conclusion (also unsupported by the facts) -- tampering with a witness - is more serious than the allegation here that the prosecutor conducted no investigation of the witness Moves Camp, the parallel is clear. The majority of the court of appeals in In re United States was unable to say whether the trial judge directed an acquittal because he thought the testimony of the initial prosecution witnesses was unworthy of belief or because of the prosecutor's "misconduct". Apparently the Supreme Court was similarly unable to segregate the basis for the decision. That difficulty is not presented here for it is manifest

from the circumstances and the trial court's pronouncements that the basis for the dismissal was misconduct, not the sufficiency of the government's case.

In sum, we think it manifest that appellees' assertion that the trial court decision dismissing the remaining counts of these indictments constitutes a "final disposition on the merits" is fallacious.

B. THE COURT'S JURISDICTION OF THIS APPEAL
UNDER 18 U.S.C. 3731 IS NOT OTHERWISE
BARRED BY THE DOUBLE JEOPARDY CLAUSE.

Throughout appellees' argument with regard to appealability there runs a vein of thought, not quite surfaced, that the government should not be permitted to retry defendants. It is, however, settled law that "[t]he double-jeopardy provision of the Fifth Amendment . . . does not mean that every time a defendant is put to trial before a competent tribunal he is entitled to go free if the trial fails to end in a final judgment." Wade v. Hunter, 336 U.S. 684, 688 (1949). See, also, Illinois v. Somerville, 410 U.S. 458, 461-466 (1973); Gori v. United States, 367 U.S. 364, 367-368 (1961), and cases cited therein; Logan v. United States, 144 U.S. 263 (1892); Simmons v. United States, 142 U.S. 148 (1891); United States v. Perez, 9 Wheat. 579 (1824).

There can be no question that a mistrial occurred here. It occurred by operation of law. Once it became clear that the ill juror was incapacitated and unable to proceed, a mistrial was compelled unless the parties could stipulate to the acceptance of a verdict rendered by the eleven remaining jurors. Once it was established that a mistrial

could not be averted because the government would not so stipulate, a mistrial occurred. The remaining counts of the indictments were thereafter dismissed.

Indeed, the stringent "manifest necessity" test enunciated in Perez and followed since with regard to mistrials without the consent or over the objection of a defendant is really inapplicable here. That standard is applicable when the trial court exercises some degree of discretion in response to the circumstances. The circumstance here was the incapacitation of one of the twelve jurors, an unfortunate development for which no party was to blame. Cf. Parker v. United States, No. 74-1636, (8th Cir.), decided December 13, 1974 (slip op. at 4). It is that circumstance which compelled a mistrial. In the absence of a stipulation to avoid this result under Rule 23(b), F.R.Crim. P., the necessity for the mistrial was not merely manifest, it was absolute.

It is clear, therefore, that if the mistrial here occurred under circumstances which preclude a retrial, it is Rule 23(b) which is implicated. Appellees do not attack the constitutionality of the Rule nor do they appear to argue that the trial court should have compelled the government to proceed with the eleven remaining jurors because the government's refusal to stipulate was an unconstitutional exercise of that statutory option under the circumstances.

^{12/} Appellees do contend that the trial court was correct in concluding that the government's refusal to stipulate was improper because the reasons underlying that refusal were improper. These allegedly improper reasons formed one basis for appellees' motion for judgment of acquittal, treated by the trial court as a motion to dismiss, filed on September 14, 1974, before the mistrial occurred. The logical extension of appellees' (Cont'd)

As we have argued (Gov. Br. at 92-99), the government as a litigant has a virtually unqualified right to refuse to stipulate to the acceptance of a verdict rendered by the eleven remaining jurors. As this Court noted in Parker v. United States, supra, slip op. at 4-5, Rule 23(b) "was intended to codify the Supreme Court's decision in Patton v. United States, 281 U.S. 276 (1930)."

Appellees argue that it is the prosecutor's "ignoble purpose" here [Singer v. United States, 380 U.S. 24, 37 (1965)] which is dispositive.^{13/} If an inquiry as to the prosecutor's motive is appropriate, we think it clear that no such "ignoble purpose" existed. Indeed, as we have

^{12/}argument in this regard should have been that the government therefore had no right under the circumstances to refuse to stipulate, since it is after all appellees' rights under the Double Jeopardy Clause which are alleged to be at issue. The result of this circumvented approach to the issue is obvious. Assuming, arguendo, that double jeopardy principles effectively foreclosed the government's refusal to stipulate under these circumstances, no ruling to that effect was sought; the question in this, its proper, posture was not entertained. Clearly, a bar to retrial is a substantially more severe result from the government's perspective than the compelled acceptance of a verdict rendered by the eleven remaining jurors would have been. Cf. United States v. Brumbaugh, 471 F.2d 1128, 1130-31 (6th Cir. 1973; concurring opinion of Judge McCree).

^{13/} In sustaining the government's right under Rule 23(a), F.R.Crim. P., to insist upon trial by jury, the Supreme Court in Singer [at 37] observed:

Nor should we assume that federal prosecutors would demand a jury trial for an ignoble purpose. We need not determine in this case whether there might be some circumstances where a defendant's reasons for wanting to be tried by a judge alone are so compelling that the Government's insistence on trial by jury would result in the denial to a defendant of an impartial trial.

No more should an "ignoble purpose" be assumed here. That the prosecutor believed the chances for conviction were "slim" is a determination implicit in Rule 23(b), as we have shown (Gov. Br. at 95). But that determination only begins the inquiry, if an inquiry is to be had.

maintained previously, we believe the prosecutor's expressed reason for declining to accept a verdict rendered by the eleven remaining jurors was sound, ethical and in the best interests of his client (Gov. Br. at 94). Our now nearly completed review of the entire transcript of these proceedings reveals that there was nothing unusual in this case about the small portion of the record we have previously described relative to the specifications of alleged misconduct (Gov. Br. 11-67). The remainder of the record likewise supports, indeed compels, the prosecutor's conclusion that the government was deprived of a fair trial in this case. Contrary to appellees' facile rejection of our contention in this regard (Br. at 61), the government is quite serious in maintaining that the record in this case dictates that conclusion. If the justification for the prosecutor's refusal to stipulate is subject to scrutiny, it is clear that his decision was premised upon extraordinary circumstances.

The record, including the repeated assertion that the prosecution had been undertaken and pursued in bad faith and the allegations (e.g., subornation of perjury and cover-up of the same) contained in the motion upon which the trial court acted in dismissing the indictments, reveals a fairly persistent attack, often before the jury, upon the integrity of the prosecutors whose task it was to try this case (e.g., Tr. 780; 2032-34; 2684; 4303; 4499; 6523; 7166-67; 7450-51; 7515; 12,052-53; 12,591-93; 13,760; 15,250; 15,315; 15,390-94; 15,397-98; 15,431; 16,357). In what was

^{13/} We do note that with respect to one such inference - that Mr. Hurd and Mr. Clayton had written a letter stating that they would no longer prosecute civil rights violations on the Pine Ridge Indian Reservation - an apology before the jury was given by defense counsel, at the court's suggestion (Tr. 12,591-93; 15,250; 17,414).

represented to be a response to remarks by Mr. Hurd in closing argument, defense counsel Lane argued in this fashion, with explicit reference to the prosecutors, to the jury:

They didn't even seem to understand what had been said, and I think they've been blinded by the racism which they've brought with them from the State of South Dakota [Tr. 21,366-67]

Mr. Hurd then objected to the argument and asserted that his remarks were being taken out of context. The objection was overruled (Tr. 21,367).

Defense counsel subsequently resumed this line of "argument":

The gentlemen charged with the administration of justice on the Pine Ridge Reservation, when it comes to the commission of a felony, are the gentlemen seated at this table.

They have that responsibility and they are responsible for the conditions of injustice on that reservation and there is their answer to you and to the world, I don't care if conditions on the Pine Ridge Reservation are good or bad.

I do not mean to say to you that every person who comes from or lives in the State of South Dakota is a racist--it's a hard state to come from and not be a racist in terms of attitudes towards the Indians. * * *

* * * * *

But it is the theme of "I don't care" which comes from this table, which implies there is no struggle, it's abject surrender to South Dakota racism and it really sums up why Wounded Knee took place.

14/ In closing argument, Mr. Hurd, in the context of arguing the issue that conditions on the Pine Ridge Reservation were irrelevant to the charges against the defendants, stated that he "did not care" what those conditions were. Aside from the callousness of that statement taken literally, rather than in the context of the argument, it would have been an assinine statement, in its literal and unqualified sense, to have made before the jury in this case (Tr. 21, 191).

They didn't care. There was no justice and no one to turn to, and when they turned to the forces of justice, this was the response they could have expected.

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There are really two things, I think, which run through this case, the manufacture of this case. One is the "I don't care" theme and the other is, don't worry, Louie, don't worry, Louie, charged with rape. [Tr. 21,373-75]

The problem with countencing such an approach to the trial of a lawsuit is obvious. Not only do personal insinuations of this nature involve the possibility that the jury will be improperly influenced, but they are also likely to goad a prosecutor into the sort of intemperate conduct which may adversely affect the juriciousness of the proceedings.

This record is also replete with instances of improper comments, usually before the jury, by defense counsel and, occasionally, the defendants themselves (e.g., Tr. 4100-101; 4499; 4750; 4813; 4995; 6279-80; 7311; 7569; 7710; 7714; 7756; 7759; 12,513; 12,777; 13,700-701; 13,723; 14,347; 14,486; 14,846-49; 15,393-94; 15,397-99; 15,403).^{15/}

But the most serious infringement upon the government's right to a fair trial was a latitude of cross-examination which permitted the defense to present its case by ennuendo, rather than the presentation of evidence.

^{15/} One of the more serious instances in this regard occurred during the cross-examination of Deputy U.S. Marshal Vernard Grimes, when he was asked whether the incident with respect to which he testified was really an effort to provoke an incident prior to a given deadline. When the witness replied "absolutely not", defendant Means interjected, saying "You're a liar." After a strong admonishment from the court, defendant Means responded that it was the court's duty to do something in the face of lying contradicted by all other previous testimony [an assertion that plainly was erroneous]. The court then found defendant Means in contempt though the contempt was purged following an apology (Tr. 14,846-49).

Indeed, the court below conceded, and often implied, that it had been far too liberal in this regard (Tr. 5007-5008; 5044; 5298-5300; 5391; 5414; 5899; 6755; 7122; 12,864; 14,759; 14,788-89). While we believe much of the cross-examination to which we refer was unquestionably improper, we note that it was usually permitted on the basis of an implicit, and frequently explicit, obligation upon the part of the defense to produce evidence supporting their ennuendos, an obligation which in large part was not met. [See, e.g., Tr. 4262-63; 5274; 5289; 5330-35; 5350-59; 5409-10; 5415-16; 5424-31; 5620 [objection sustained]; 6140 [question withdrawn "to save time"]; 6279-80; 6748-50 [objection sustained]; 7478; 7624; 7631; 7653-57; 7662 [objection sustained]; 7751; 7759-77; 7780; 7785; 7869-70; 12,253-55; 12,264; 12,589-93; 12,630-33; 12,921; 13,771-76; 13,781-88; 13,831-45; 14,298-301 [objection sustained]; 14,303; 14,316-17; 15,419-23; 15,429-48; 15,457-58; 15,655; 15,659-62; 15,681-83; 16,090; 16,868-69]. In closing argument the prosecutor noted several instances where this obligation was not met (Tr. 21,509-12; 21,516-22; 21,524-28). This was objected to as improper argument (Tr. 21,522-23).^{16/} We have included but a very few of the innumerable improper questions to which objections were sustained.

^{16/} One of the more egregious examples occurred during the cross-examination of government witness Virgil Randall, when defense counsel inquired whether he was inebriated on the night of February 27, 1973 and whether he had a habit of excessive drinking while on duty. Thereafter, the court reminded defense counsel that when such charges are denied it is incumbent upon the defense to ultimately produce evidence supporting the charge. Defense counsel responded that they were quite prepared to do that. The witness was then asked whether he had recently passed out in a St. Paul hotel; an objection to the question was sustained. The witness was then asked whether he had been transferred because he had recently shot and killed one Little Spotted Horse, shot his brother in the leg and struck a pregnant woman, one Mary Prairie, in the stomach with a billy club causing her to miscarry. Thereafter the Court very strongly rebuked counsel for the "absolutely improper" questions. Subsequently, however, following extensive argument and upon the expressed understanding that evidence supporting the questions existed and would be proffered, the trial court permitted an examination of the witness along these lines (Tr. 5355-63; 5381-84; 5389-5400; 5409-16; 5424-32). However, no proffer of such evidence was offered.

In the very brief and wholly unresponsive allusion to our contention that the government did not receive a fair trial, appellees characterize our argument as an "attack on the trial judge" (Br. at 61). Although we do believe that many rulings of the trial court lent themselves to that result, the characterization is nevertheless unfortunate. What the record does reveal is that the patience of a trial judge of extraordinary good will towards these defendants was sorely tried by defense tactics (E.g., Tr. 2645; 2814; 3465-66; 3870-71; 3942-46; 3958-63; 4499; 4961; 5007-5008; 5171-72; 5557-78; 6279-6280; 12,861-65; 13,855; 14,296-97; 14,589-93; 14,600; 14,846-49; 14,858; 15,393; 15,397-99; 15,403-404). The court's chagrin at the persistent refusal of defense counsel to accept its rulings is also clear from the record (E.g., Tr. 2754-56; 13,744-46; 13,661; 13,791; 13,858; 14,302; 14,781; 14,858). It is clear that the court was determined to prevent disruption and to avoid being goaded into any intemperate act which might be deemed prejudicial to the rights of the accused (See, also, Tr. 12,861). Too often this goal was accomplished by acceding to their demands (e.g., supra, note 16). At one point, the disruption due to the court's initial refusal to permit the defendants to proceed pro se in mid-trial, became fairly explicit and indeed it is probable that the trial court's acquiescence to the defendants demands avoided that result (Tr. 13,127-165; 13,168-179).^{17/} We do not believe any other plausible interpretation can be placed on the incident.

^{17/} We do not condemn the result achieved, that is, the court's having permitted defendants on a trial basis to cross-examine witnesses, but rather the manner in which it was accomplished. It is not without interest, however, that despite defendants' initial and absolute insistence upon dismissing counsel and proceeding pro se and despite the trial court's eventual acquiescence to the extent of permitting defendants to cross-examine witnesses, counsel continued to assume the major burdens of trying this lawsuit.

In sum, we think that jurisdiction to hear this appeal, if not otherwise established, is mandated by "the public's interest in fair trials designed to end in just judgments." (Wade v. Hunter, *supra*, 336 U.S. at 689; Illinois v. Somerville, 410 U.S. 458; and, see, Simmons v. United States, *supra*, 142 U.S. 148.

II. THE SPECIFICATIONS OF MISCONDUCT ARE NOT
SUPPORTED BY THE RECORD.

We agree with appellees that any factual findings made by the district court are subject to the "clearly erroneous" standard.^{18/} Although we believe the specifications of misconduct fail if subjected to that standard, we cannot agree that "clearly erroneous," or "plain error," is the proper measure of appellate scrutiny where legal conclusions of what constitutes prosecutorial misconduct are involved. The legal obligations of prosecutors are clearly matters properly subject to independent appellate evaluation.

In discussing these specifications of misconduct, appellees seek to support the dismissal by reference to alleged misconduct by law enforcement personnel. In its written decision, the trial court stated:

Because I have come to the conclusion that the prosecutor and possibly other law enforcement officials have conducted certain aspects of this trial in bad faith, it becomes my duty to devise a remedy [Op. at p. 5; emphasis supplied].

This reference to possible misconduct by other law enforcement officials is precisely the sort of "vague and unsubstantiated doubt" that cannot support

^{18/} Certain of the trial court's factual findings were "clearly erroneous," [e.g., that the prosecutor conducted "no investigation" of Moves Camp's story (Op. at 8); that it was possible that Agent Enlow did not inform Mr. Hurd of the allegation of rape against Moves Camp (Op. at 10-11)].

a dismissal. United States v. Whitted, 454 F.2d 642, 645-646 (8th Cir. 1972); United States v. Dooling, 406 F.2d 192, 197 (2nd Cir. 1969), certiorari denied, sub nom. Persico v. United States, 395 U.S. 911 (1969).

In addition to the very lengthy evidentiary hearing which in part involved the question of compliance with the "very broad" (Tr. 4302) discovery order here, a significant portion of the proceedings below were devoted to the issue of discovery. That issue cannot, we submit, be properly considered without a full recitation of the relevant facts any more than the specifications of misconduct can be considered apart from their entire context. ^{19/} Moreover, this case does not involve the destruction or loss of evidence, much less critical evidence, nor was there a showing of specific prejudice. As such, dismissal is clearly not warranted on this basis. As the court below observed in this regard [United States v. Banks, 374 F. Supp. 321, 328-331 (D.S.Dakota, 1974)]:

Before analyzing the government's specific failures, it must be pointed out that they do not encompass that failure for which the sanction of dismissal is most appropriate - the destruction or loss of evidence. 2 [at 328]

* * * *

Even when evidence is lost or destroyed, even when its benefits are denied the defendants forever, which is not the case here, the drastic sanction of dismissal does not flow automatically. Outright dismissal is

^{19/} We object to any characterization of the actions of the prosecutor with regard to compliance with discovery order as "misconduct." What the record does reveal is that discovery was massive and that the prosecutor continued after the evidentiary hearing to supply the defense with materials that surfaced notwithstanding the renewed attack upon his integrity which such continuing compliance prompted. It is not our intention to suggest, however, that a more thorough and systematic approach to compliance with the discovery order prior to the evidentiary hearing would not have obviated some of these problems. While we argue infra that the technical violations of the discovery order cannot in any event support the dismissal here, we are certainly prepared to submit supplemental briefing on this point, if the Court wishes.

justified in two instances: (1) where the government fails in its heavy burden of proving that it made earnest efforts to preserve the evidence, United States v. Augenblick, 393 U.S. 348 * * * (1968), United States v. Bryant, * * * 439 F.2d 642 (1971); and (2) where the lost evidence is so vital to the defense of the case that a fair trial is impossible without it. United States v. Heath, 260 F.2d 623 (9th Cir. 1958). [at 328, n. 2]

We note, moreover, that the court below did further conclude as follows in this regard:

This court refuses to conclude, however, that non-compliance sprang from any bad faith on the part of the prosecutor or the F.B.I.

United States v. Banks, supra, 374 F.Supp. at 329.

CONCLUSION

For the reasons stated, this Court has jurisdiction of this appeal under 18 U.S.C. 3731 and for the reasons previously stated as well as those advanced here, the trial court's order of dismissal should be vacated and the indictments, reinstated.

JOHN C. KEENEY, Acting
Assistant Attorney General

WILLIAM F. CLAYTON
United States Attorney

SHIRLEY BACCUS-LOBEL
Attorney,
United States Department
of Justice


CERTIFICATE OF SERVICE

I certify that copies of Appellant's Reply Brief were mailed
this 18th day of February, 1975, to Appellees' attorneys of record:

Kenneth E. Tilsen, Esq., 400 Minnesota Building, St. Paul, Minnesota

55101, and Douglas Hall, Esq., Legal Rights Center, 808 Franklin Avenue E.,

Minneapolis, Minnesota 55404.


Shirley Baccus-Lobel

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI
Attn: SA JOHN C. GORDON
GENERAL CRIMES UNIT, GENERAL INVESTIGATIVE DIVISION

FROM : SAC, ST. LOUIS (157-5315) (P)

SUBJECT: DENNIS JAMES BANKS;
RUSSELL CHARLES MEANS;
WOUNDED KNEE LEADERSHIP TRIAL
CIR - BURGLARY; ET AL,
OO: Minneapolis

DATE: 3/26/75

Re St. Louis airtel to Bureau dated 3/12/75, and St. Louis letter to the Bureau, 2/26/75.

On 3/24/75, [REDACTED] U. S. Court of Appeals, 8th Circuit, St. Louis, Missouri, advised captioned case was argued between the Court of Appeals on March 11, 1975 and that no opinion has been rendered to date.

b6
b7c

St. Louis will continue to monitor closely activity in this matter and will report Court of Appeals opinion immediately upon receipt.

2 - Bureau
2 - Minneapolis (70-6832 Sub P)
2 - St. Louis (1 - 157-5315)
JCH:gas (1 - 66-2347)
(6)

REC-4

89-2881-12

MAR 31 1975



54 APR 10 1975

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UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (70-58411)
ATTN: [REDACTED] ROOM 11262 JEH

FROM : SAC, MINNEAPOLIS (70-6832)

DATE: 1/21/76

b6
b7C

SUBJECT: DENNIS JAMES BANKS;
RUSSELL CHARLES MEANS;
CIR - BURGLARY, ETC.,
WOUNDED KNEE LEADERSHIP TRIAL
ST. PAUL, MINNESOTA

Re Identification letter to Minneapolis 6/26/74,
and Identification telephone call to Minneapolis 1/16/76.

Enclosed for Identification Division are:

1. ~~Original latent fingerprint card for~~ [REDACTED] FBI # 714-995-E;
2. ~~Original fingerprint card for CARTER~~
~~AUGUSTUS CAMP, FBI # 108 750 G; and,~~
3. Original fingerprint card for LEONARD (NMN)
CROW DOG, FBI # 539 240 E.

For the information of the Bureau, the original fingerprint card for STANLEY RICHARD HOLDER, FBI # 679 663 J 7, is not in the possession of FBI, Minneapolis. This card was turned over to South Dakota U. S. Attorney's Office during the preparation and trial for STANLEY RICHARD HOLDER and to date has not been returned to Minneapolis. Inquiry with U. S. Attorney's Office, South Dakota, has determined that USA cannot locate above fingerprint card.

Contact will be maintained with USA's Office in effort to locate and return fingerprint card for HOLDER.

- 3 - Bureau (Enc. 3) (RM)
4 - Minneapolis
(1 - 70-6832 Sub D)
(1 - 70-6832 Sub F)

JOH:rfr
(7)

